

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

James Thornton, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98CV0890(EGS)
)	
National Railroad Passenger)	
Corporation (“Amtrak”),)	
)	
Defendant.)	

CONSENT DECREE

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. NATURE OF CASE.....	2
III. GENERAL TERMS OF THE DECREE.....	3
A. Definitions.....	3
B. Jurisdiction and Venue.....	10
C. Effective Date and Term of Decree.....	10
D. Persons Covered by Consent Decree	10
1. Definition of Classes.....	10
2. Opt Out	11
E. Denial of Liability.....	11
F. Release/Bar of Claims.....	13
G. Conflicts.....	14
IV. GENERAL INJUNCTIVE MEASURES.....	15
A. General Provisions.....	15
1. Preamble.....	15
2. Target Dates	16
3. Joint Retention of Neutral Expert	17

4.	Outside Consultants	17
5.	Computation of Time	18
6.	Relationship to CBA	18
B.	Hiring	18
1.	Hiring of NEC Employees Covered by the CBA	19
a.	Applicant Forms and Applicant Flow Database	19
b.	Screening, Interview and Selecting Applicants	19
c.	Monitoring of Job Placements	24
2.	Hiring of MBTA Amtrak Employees Covered by the CA	25
3.	Hiring of ARASA Supervisors Who Supervise Members of the NEC BMWE	29
a.	Procedures for Hiring	29
b.	Monitoring	31
C.	Qualifications, Testing and Advancement.....	31
1.	Standardized	
	Qualifications.....	31
a.	Revision and Standardization of Classification Descriptions	31
b.	Posting of Requisite Job Qualifications and Challenges thereto	32
2.	Standardized Administration of Tests.....	33

a.	Qualified Examiners	33
b.	Forms for Practical Tests	36
c.	Administration of Practical Tests.....	37
d.	Written Tests.....	40
e.	Effect of Passing Re-test.....	41
3.	Standardized Notification of Vacancies.....	42
4.	Monitoring for Uniformity of Test Access and Results.....	43
5.	Standardized Training	43
a.	Training Administrator.....	43
b.	Types of Training Opportunities.....	44
(1)	NORAC.....	45
(a)	Initial four-day training program	45
(b)	NORAC Recertification	45
(3)	Physical Characteristics Training.....	45
(4)	Commercial Drivers' License ("CDL") Opportunities.....	47
(5)	Training Slots under the Training Agreement.....	48
(a)	Foreman.....	48

(b) Crane	
Operators.....	49
1) Burro, crawler, jumbo, portal & kiro.....	49
2) Smaller hydraulic cranes like pettibone & speed.....	49
(c) General Construction Equipment	49
(d) Structural welders	49
(e) Arc welders.....	50
(f) Bute or thermite welders	50
(7) Electric Traction Department Training	50
(8) One-for-One Training Opportunities.....	50
(9) Cross-Training	51
j. Training	
Materials.....	52
k. Monitoring.....	52
l. Amtrak MBTA Operations.....	53
D. Discipline.....	53
1. Investigation of Charges of Disparate Discipline.....	53
a. Disparate Initiation of Discipline.....	53

b. Disparate Provision of Waivers.....	54
c. Imposition of Penalties.....	54
d. Complaints.....	54
5. Remediation of Disparity.....	55
6. Discipline of Officials.....	55
7. Hearing Process.....	57
a. Hearing Officer.....	57
b. Applicable Standards.....	59
(1) Credibility Determinations.....	59
(2) Witnesses.....	59
(3) Evidence from Non-Employee Witnesses not Available for Cross Examination.....	60
(4) Defense.....	60
(5) Access to Decisions.....	61
6. Purging	61
7. Training.....	62
8. Monitoring	62
E. Equal Employment Opportunity	62
1. Reorganization of the Amtrak Dispute Resolution Unit Function.....	62

2.	Internal Complaint Procedure	65
3.	Monitoring of Internal Complaint Procedure	69
4.	Processes Specific to MBTA Complaints	69
5.	Pattern and Practice Investigation.....	70
6.	Training.....	71
V.	INCORPORATION OF INJUNCTIVE PROVISIONS INTO CBA.....	71
A.	Preamble.....	71
B.	Identification of Positions.....	72
C.	Negotiation.....	72
D.	Judicial Determination on Incorporation.....	73
1.	Standard for Incorporation.....	73
2.	Process.....	74
C.	Attorney Fees and Expenses.....	76
D.	Extension of Term of the Consent Decree.....	78
VI.	SETTLEMENT FUND.....	78
A.	Creation and Administration of Fund.....	78
1.	Creation and Purpose	78
2.	Administrators= Administrative Responsibilities.....	82

B.	Claims Filing Procedures For Settlement of Claims of Plaintiffs and Class Members	82
VII.	JOB RELIEF	84
A.	Assertion of Claims by Terminated Class Members for Job Relief.....	85
1.	Limitations on Individual Participation	85
2.	Consultation Period and Voidability of Settlement	85
3.	Reduction in Monetary Relief.....	86
4.	Procedures	86
a.	Identification of Claimants and Initial Exchange of Evidence.....	86
b.	Negotiation.....	87
c.	Mediation	87
d.	Arbitration	87
1)	Hearings	88
2)	Evidence	88
3)	Standards for decisions	90
4)	Definition of Job Relief	90
B.	Assertion of Claims by “Test-takers” for Job Relief	91
1.	Limitations on Individual Participation	91

2.	Consultation Period	91
3.	Reduction of Monetary Relief	91
4.	Procedures	91
5.	Definition of Job Relief	92
VIII.	NOTICE	92
IX.	RECORDKEEPING AND REPORTS	92
A.	Periodic Reports	92
B.	Copies of Certain Items to be Provided	94
F.	Access to Records	97
D.	Reports to the Court	99
X.	MONITORING	99
A.	Monitor Roles	99
B.	Periodic Meetings	99
XI.	ENFORCEMENT	100
A.	Negotiation and Mediation	100
B.	Procedures for Enforcement Proceeding	101
XII.	CONFIDENTIALITY AND RETURN OF DOCUMENTS.....	101
XIII.	PUBLICITY	103

XIV. SEVERABILITY	103
XV. GOVERNING LAW/ENTIRE AGREEMENT.....	104

SCHEDULE OF EXHIBITS

Exhibit A (List of all Named Plaintiffs)

Exhibit B (Release of Claims)

Exhibit C (Stipulation of Dismissal)

Exhibit D (Administrators Release)

I. INTRODUCTION

This Consent Decree sets forth the full and final terms by which Named Plaintiffs, on behalf of themselves and members of the Class defined herein, and Defendant National Railroad Passenger Corporation (Amtrak), have settled and resolved all claims or potential claims between them relating to all positions in the Northeast Corridor Strategic Business Unit of Amtrak (“NEC”) represented by the Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees (“BMWE”) or affiliate of the BMWE. This Decree encompasses all claims of any alleged race discrimination against African American BMWE represented employees in Positions and African American applicants for BMWE covered Positions, as those terms will be defined herein, through or as a result of any alleged discriminatory purpose, pattern or practice, or adverse impact of Amtrak’s practices and policies with respect to hiring, qualifications, testing, advancement, discipline, termination, the toleration of a hostile working environment, and other personnel practices or decisions. This Decree does not encompass claims relating to or arising from employment in Management positions, or claims relating to application for promotion to Management positions, as those claims are covered by the Consent Decree in *McLaurin, et al. v. Amtrak*, C.A. 98CV2019(EGS). Amtrak has voluntarily entered into this Consent Decree to address concerns raised by its diverse workforce, to avoid protracted and costly litigation, and to focus its corporate resources on serving Amtrak’s customers and operating a first-class national rail passenger system.

II. NATURE OF THE CASE

On April 8, 1998, ten Black Amtrak employees who are or have been employed in Positions at Amtrak, one black rejected applicant for a Position, and the BMW filed a Complaint in this Court. The Plaintiffs asserted claims against Amtrak for race discrimination in hiring, qualifications, testing, advancement, discipline, and termination. The Complaint further alleged a pattern and practice of discrimination by Amtrak and tolerance of a racially hostile working environment. The Plaintiffs asserted claims on behalf of themselves and putatively on behalf of similarly situated current and former employees and rejected applicants for Positions. On June 24, 1998, the Plaintiffs filed a First Amended Complaint, which added three additional Plaintiffs and putative Class representatives. The Plaintiffs' claims were brought under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* ("Title VI"), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and 42 U.S.C. § 1981. On that same day, this Court dismissed Plaintiffs' Title VI claims pursuant to an earlier filed motion to dismiss the original complaint. On August 4, 1998, Plaintiffs filed a Second Amended Complaint. Amtrak filed an Answer to the Second Amended Complaint denying the allegations and specifically denying any violation of law.

The Parties voluntarily entered into mediation in November 1998 in an effort to address, outside of the courtroom, the concerns raised by Plaintiffs and to avoid litigation costs. While formal discovery has not been completed, the Parties have taken sufficient discovery, and have voluntarily

exchanged sufficient information, to assess the relative merits of the systemic claims of the Plaintiffs and the putative Class, and of Amtrak's defenses. After many months of mediation and negotiation, the Parties reached an agreement-in-principle on February 22, 2000, the terms of which are incorporated in and superseded by this Consent Decree.

III. GENERAL TERMS OF THE DECREE

A. Definitions

For purposes of this Consent Decree (interchangeably the "Decree") and all exhibits hereto, the capitalized terms in such documents shall have the meanings set forth below. All terms defined in the singular shall have the same meaning when used in the plural, and all terms defined in the plural shall have the same meaning when used in the singular.

1. "Amtrak" is a corporation incorporated under the laws of the District of Columbia engaged in the transportation of passengers by railroad and related businesses as defined by 45 U.S.C. ' 501 *et seq.* Any references to AAmtrak@ shall include the National Railroad Passenger Corporation, its past and present directors, officers, agents, employees, and other representatives.

2. "NEC" is the Northeast Corridor Strategic Business Unit of Amtrak and shall be defined to encompass, for purposes of this Decree, Amtrak operations under contract to the MBTA.

3. “BMWE” is the Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees. “Affiliate of the BMWE” shall include any labor organization affiliated with the Brotherhood of Maintenance of Way Employees and representing Amtrak employees in the NEC.
4. “MBTA” is the Metropolitan Boston Transit Authority.
5. “Named Plaintiffs” or **APlaintiffs@** mean those thirteen individuals who were named as Plaintiffs in the Second Amended Complaint and the BMWE. The names of all of the Named Plaintiffs in this litigation are set forth in Exhibit A.
6. **AParties@** means the Named Plaintiffs and Amtrak.
7. **ABlack@** shall be defined as in Appendix 4 of the current Instruction Booklet for completion of Standard Form 100, Employer Information Report EEO-1. The terms **ABlack@** and **AAfrican American@** are used interchangeably, and for purposes of this Decree, shall include Black aliens, lawfully able to work for Amtrak but who are not of American citizenry or descent.
8. The phrases **AApplied to@** Amtrak, “Applicant for,” or **AApplied for@** employment at Amtrak means expressed interest, or a person who expressed interest, in employment at Amtrak through participation in a job fair, submission of an application form or resume,

participated in an interview, or any other contact with Amtrak concerning possible or potential employment.

9. “Lead Counsel@ for purposes of this Decree means Michael Liedler, Maia Caplan, and other attorneys of the law firm of Sprenger & Lang, 1614 Twentieth Street, N.W., Washington, D.C. 20009. “Class Counsel” refers to the above Lead Counsel as well as Roderic V.O. Boggs, Avis Buchanan, and other attorneys of the Washington Lawyers’ Committee on Civil Rights & Urban Affairs, 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036; Andrew A. Rainer, Shapiro, Haber & Urmy LLP, 75 State Street, Boston, MA 02109; and the Lawyers=Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington Street, Suite 940, Boston, MA 02108.

10. AManagement positions@ means employees or positions not subject to a collective bargaining agreement (ACBA@), and not on the Amtrak Management Committee.

11. AAmtrak’s Counsel@ means the law firm of Morgan, Lewis & Bockius LLP, 1800 M Street, N.W., Washington, D.C. 20036, including attorneys Thomas E. Reinert, Jr. and Grace E. Speights.

12. AClass Members@ or AClass,@ or any variation of such term means all members of the Class defined in Part III(D) of this Decree.

13. ADistrict Court@ or ACourt@ means the United States District Court for the District of Columbia.

14. “Collective Bargaining Agreement” or “CBA” is the Agreement between Amtrak and the BMW for the Northeast Corridor, updated August 1, 1993, and any successor agreements.

15. “Corporate Agreement, or “CA,” is the BMW Corporate/Off Corridor Agreement dated March 1, 1976, and any successor agreements, which encompasses Amtrak operations under contract to the MBTA.

16. “BMW represented positions”, or “BMW covered positions”, or “BMW Agreement-covered positions” or “Positions” includes those positions within the Northeast Corridor Strategic Business Unit that are subject to the CBA (as defined above), and Amtrak positions in the MBTA (as defined above) operations that are covered by the CA (as described above), to the extent Amtrak continues to conduct operations under contract to the MBTA.

17. “Qualified Applicant” means an applicant who meets all of the minimum requirements for a Position.

18. “ARASA” means the American Railway Supervisors Association.

19. “ARASA supervisors” means the supervisory positions that are covered by the ARASA collective bargaining agreement between ARASA and Amtrak.

20. “NORAC” means the Northeast Operating Rules Advisory Committee of Amtrak.

21. “Official” means an Amtrak manager who has the ability to initiate a disciplinary charge or proceeding against an employee in a Position or to implement discipline against an employee in a Position.

22. ~~A~~Payee@ means attorneys (including former attorneys) for any of the Plaintiffs or Class Members, and all experts, consultants and others associated with or retained by Plaintiffs or such attorneys, including Class Counsel. Payments to Payees shall be subject to, and limited by, Part VI of the Decree with the exception of fees, costs and expense of Part V relating to incorporation into the CBA.

23. The ~~A~~Non-Injunctive Effective Date@ for the provisions of this Decree relating to Job Relief or the Fund shall refer to the date on which the Court has finally approved, signed, and entered this Decree *and* the time for appeal has run without an appeal being filed or, if an appeal is filed, the final resolution of that appeal (including any requests for rehearing en banc, petitions for certiorari, or appellate review). The “Injunctive Effective Date” for the remaining provisions of this Decree relating to injunctive relief shall refer to July 1, 2000, or the date by which the Court has finally approved, signed, and entered this Decree *and* the time for appeal has run without appeal being filed or, if an appeal is filed, the final resolution of that appeal (including any requests for rehearing, rehearing en banc, petitions for certiorari, or appellate review), whichever is later.

24. ~~A~~Settlement Fund@ or “Fund” means the qualified settlement fund created by the deposit, in the installments and at the times agreed to by the Parties, of \$16 million in principal by Amtrak, the purpose and administration of which are governed by Part VI of this Decree.

25. ~~A~~EEO Office@ or ~~A~~Dispute Resolution Unit@ means Amtrak=s internal Equal Employment Opportunity unit in the Department of Business Diversity and Strategic Initiatives (“Business Diversity”), while the term ~~A~~EEO@ shall refer to equal employment opportunity, as that phrase is understood legally.

26. ~~A~~Claim Resolution Process@ or ~~A~~CP@ means the procedures for resolution of Eligible Claims as set forth in Part VI of the Consent Decree.

27. AClaimant@ means any person who is eligible to make, and who has made, a claim in the Claim Resolution Process as set forth in Part VI(B) of the Consent Decree.

28. AClass Claim@ means any individual or class-wide race discrimination claim, administrative charge, demand, complaint, right, and cause of action of any kind, known or unknown, by a Class Representative or Class Member against Amtrak for monetary or equitable relief or for attorney's fees, arising from any events, acts, omissions, policies, practices, procedures, conditions, or occurrences concerning employment in BMW positions with Amtrak or applications for BMW positions with Amtrak at any time on or after January 1, 1995, but no later than May 5, 2000 under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. ' 2000 *et seq.*, the Civil Rights Act of 1866, 42 U.S.C. ' 1981 *et seq.*, or any other federal, state, District of Columbia or local statute, regulation, rule, order, ordinance or other authority of any nature prohibiting racial discrimination in employment. AClass Claim@ refers to any claims or other causes of action described above brought in an arbitral, judicial or other forum of whatsoever kind or nature.

27. AMandatory Joinder Claim@ means any claim arising out of the same occurrence, event, or nucleus of facts as any Class Claim.

29. AEligible Claims@ means all Class Claims and Mandatory Joinder Claims.

30. "Job Relief Process" means the procedures under Part VII of this Decree for resolution of Job Relief Claims.

31. "Eligible Job Claims" means all claims that meet the eligibility requirements for processing under Part VI of the Decree.

32. "Job Relief Election Form" means the form used to designate an affirmative election to participate in the Job Relief Process mailed by the Job Claimant to Class Counsel.

33. "Job Claimant" means any person who is eligible and selects to make, and has made, a claim in the Job Relief Process under Part VII of the Decree.

34. AAdministrator@ or ATrustee@ means the persons designated by Plaintiffs and Amtrak to effectuate the Settlement terms, concerning the satisfaction and resolution of all Claimants' claims pursuant to the Claim Resolution Process set forth in Part VI(B) of this Decree; receiving and processing information from Claimants pertaining to their claims; investing, allocating, and distributing the Fund; and in general supervising the administration of the Settlement Fund in accordance with the Decree. The Parties have agreed that Michael Lieder, Esquire and Lawrence Schaefer, Esquire of Sprenger & Lang shall be the Administrators and Trustees of the Settlement Fund.

35. AClaim Form@ means the written description of Claimant's Claims served by a Claimant on the Administrator to initiate the Claim Resolution Process.

36. AClaim Form Submission Date@ or “Job Relief Election Form Date” means the post-marked date of the respective form that has been mailed to the Administrator or Class Counsel, respectively.

37. “Statistically Significant” disparity shall mean a disparity measured by at least two standard deviations.

B. Jurisdiction and Venue

The Parties agree that this Court has jurisdiction over the Parties and the subject matter of this action, and that venue is proper. This Court shall retain jurisdiction of this action for the duration of the Decree solely for the purpose of entering all orders, judgments and Decrees authorized hereunder that may be necessary to implement and enforce the relief provided herein.

C. Effective Date and Term of Decree

This Decree and the agreements contained herein are effective as of the Injunctive and Non-Injunctive Effective Dates, as defined in Part III A, although Amtrak has already implemented or begun to implement many of the items of equitable relief provided. The Decree and the agreements contained in it shall continue to be effective and binding on the Parties and their agents and successors for a four-year period from the Injunctive Effective Date, unless extended or terminated earlier pursuant to the terms of Part IV A(2), VF or X. The releases and bars on claims shall survive the Decree.

D. Persons Covered By Decree

1. Definition of Classes

Pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), the Parties stipulate to the certification of the following Class composed of all black persons who, at any time between January 1, 1995 and May 5, 2000:¹

Have been employed by, or applied for, positions with Amtrak in BMW
Agreement-covered positions in the Engineering Department of Amtrak’s Northeast Corridor (including Amtrak operations under contract to the MBTA).

2. Opt Out

If this Decree is approved by the Court, all persons within the Classes are bound by its terms, except for Class Members, other than Named Plaintiffs, who have elected to opt out of the Class and the settlement described herein following and on Court approval. Class Members who elect to opt out

¹ Pursuant to the Agreement in Principle this date will be the 30th day following the date of preliminary approval of this Decree by the Court.

must do so in writing no later than the date specified in the notice provisions contained herein. Elections to opt out must be submitted pursuant to the procedure set forth in the Notice and must be approved by the Court. If more than ten (10) Class Members are permitted to opt out of this Decree, Amtrak may withdraw from this Decree and void this settlement. Amtrak shall have fifteen (15) days from the day that it receives notice that more than 10 Class Members have been permitted to opt out, and of the identity of such individuals, to withdraw from the Decree and to void the settlement.

E. Denial of Liability

Amtrak expressly denies any wrongdoing or liability whatsoever. This Decree represents the compromise of disputed claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time, resources, and money. The Decree does not constitute, and is not intended to constitute, and shall not under any circumstances be deemed to constitute an admission by either Party as to the merits, validity, or accuracy, or lack thereof, of any of the Plaintiffs' allegations or claims in this case. Neither this Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations or claims alleged in this action.

Nothing in or related to this Consent Decree, including any action taken to implement it or any statements, discussions or communications made, or any materials prepared or issued during the course of the mediation or negotiations leading up to the Consent Decree may be introduced or used or admitted in any way, in any other judicial, arbitral, administrative, investigative or other proceeding of

any kind or nature whatsoever as evidence of discrimination, retaliation, or any violation of Title VII, Part 1981, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Documents, data and information prepared for the negotiations and exchanged by the Parties since the inception of the lawsuit may be used in this case solely with respect to enforcement of the Decree, in the process of determining whether Consent Decree provisions will be incorporated into the CBA pursuant to Part V below, and/or in the Job Relief Process pursuant to Part XI below.

In the event that Final Approval of this Decree is not obtained, nothing herein shall be deemed to waive any of Plaintiffs' claims, Amtrak's objections and defenses, including but not limited to objections to Class certification, and neither this Decree nor the Court's preliminary or provisionally final approval hereof shall be admissible in any court regarding the propriety of Class certification or regarding any other issue or subject of this case.

F. Release/Bar of Claims

The provisions of this Decree shall resolve finally and forever bar hereafter any and all Class Claims and Mandatory Joinder Claims as defined in Part III(A) of this Decree, in law or in equity, of the Named Plaintiffs and Class Members, other than persons who have been allowed by the Court to opt out of this Decree, which any of them, their representatives, agents, heirs, assigns, executors, administrators, successors or assigns, may have, may have had, or in the future may have against Amtrak, including any alleged continuing violations after the Effective Date insofar as any claims arise

from or relate to events that occurred prior to May 5, 2000. Named Plaintiffs and Class Members shall further be barred from submitting evidence in any proceeding, other than Claim or Job Relief proceedings under this Consent Decree, concerning any Class Claim or Mandatory Joinder Claim, in support of any claim arising after May 5, 2000.

Res judicata shall apply to all Named Plaintiffs and Class Members (except those who have been allowed by the Court to opt out under the provisions of this Decree) with respect to all Class Claims and Mandatory Joinder Claims, which are known or unknown, actual or potential.

As a condition precedent to the receipt of any relief under the terms of this Decree, Named Plaintiffs and Class Members shall, in consideration thereof, execute Amtrak's Release and the Administrator's release, exactly as they appear in Exhibits B and D, respectively. The Named Plaintiffs and Class Members shall execute Amtrak's Release and the Administrators' Release before receiving any Job Relief provided under the terms of the Decree or monetary payment from the Settlement Fund, whichever comes first; however, in the event a Named Plaintiff or Class Member does not receive monetary and Job Relief simultaneously, the execution of Amtrak's Release and the Administrators' Release at the time the first form of relief is awarded shall not extinguish his or her claim for the other form of relief if he or she is also entitled to such other form of relief under the terms of this Decree.

The Complaint in this action against Amtrak shall be dismissed in its entirety, with prejudice, on the Non-Injunctive Effective Date, pursuant to the Joint Stipulation of Dismissal, attached hereto as Exhibit C. Within three weeks following the Non-Injunctive Effective Date, Class Counsel shall make

good faith efforts to secure prompt withdrawal or dismissal of any other pending lawsuits, appeals, administrative charges or other proceedings with respect to any Class Claims brought against Amtrak by the Named Plaintiffs, any of their other clients, and any Class Members (except those who have been allowed to opt out), that have been identified to Class Counsel by Amtrak.

G. Conflicts

Due to Class Counsel's continuing representation of the Class, their receipt of confidential information regarding Amtrak during this litigation, and their continuing receipt of such confidential information during the term of the Decree, Class Counsel agree during the term of the Consent Decree not to undertake any representation that would create a conflict of interest or involve the use of Amtrak's confidential information for purposes unrelated to the enforcement of the Decree.

Class Counsel further agree that during the term of the Decree they will not represent any Class Member who is allowed to opt out of the provisions in this Decree, in any litigation against Amtrak which arises out of, or is related to, Class Claims asserted in this case prior to the expiration of the Decree, if such representation would create a conflict of interest.

This provision shall not be interpreted to prohibit Class Counsel's continuing representation in *McLaurin, et al. v. Amtrak*, C.A. 98CV2019 (EGS).

IV. GENERAL INJUNCTIVE MEASURES

A. General Provisions

1. Preamble

Amtrak and the BMW are committed to equal employment opportunities in all aspects of employment. The purpose of these general injunctive measures is to provide all class members with training, testing, and advancement opportunities that are equivalent to those opportunities available to similarly situated non-African American employees in Positions and applicants for Positions. However, except for provisions expressly limited to African Americans, all provisions herein apply to all employees in Positions and applicants for Positions.

2. Target Dates

The Parties recognize the importance of timely implementation of the injunctive relief provided under this Decree. The schedule set forth in this Decree is the schedule for implementing the injunctive relief, and is based upon the Parties' current best estimates of the time required for such implementation. Amtrak will make good faith efforts to meet that schedule. The Parties recognize, however, that notwithstanding Amtrak's good faith efforts, it may become necessary to extend the implementation schedule for some elements of the injunctive relief. Amtrak agrees to provide reasonable advance notice, in no case fewer than 30 days, to Class Counsel in the event that Amtrak is unable to meet any aspect of the implementation schedule, and the Parties agree to cooperate in good faith in seeking to agree upon necessary changes. If the Parties are unable to reach agreement and the extension contemplated by Amtrak for action on any item, in conjunction with any prior extensions for

that item, exceeds thirty (30) percent of the total time permitted under this Decree for that item, Class Counsel may bring the matter to the Court's attention for resolution pursuant to Part XI of this Decree. In the event that Amtrak does not meet its implementation target dates under this Decree, as extended pursuant to the procedures above, for any such item, the expiration of the Decree for the provisions corresponding to the implementation of such injunctive relief shall be delayed by the identical length of time.

The Parties shall notify the Court of any agreed modification of the schedule set forth herein that exceeds thirty (30) percent of the total time permitted for any item, and of the corresponding extension of the term for the relevant Consent Decree part. The Parties shall not be required to notify the Court of any such modification that is less than thirty (30) percent of the total time permitted under this Decree for implementation of any item.

3. Joint Retention of Neutral Expert

Class Counsel and counsel for Amtrak jointly have retained Economic Research Services, Inc. and Joan G. Haworth, Ph.D. of Economic Research Services, Inc. as a Neutral Expert to assist in the implementation of this Decree. This Neutral Expert shall assist the Parties in developing: (1) statistical tests for monitoring compliance with this Decree; and (2) databases necessary for implementing such statistical tests. Amtrak shall be responsible for all reasonable fees and expenses relating to the Neutral Expert's work pursuant to this Consent Decree.

4. Outside Consultants

Wherever this Decree provides that Class Counsel shall review the credentials and qualifications of, or be consulted with respect to, an outside consultant that Amtrak intends to retain in connection with the injunctive provisions of this Decree, the following procedures shall govern: (1) Amtrak shall provide Class Counsel with the names and curricula vitae of individuals responding to its request for proposal (“RFP”) and otherwise under consideration by Amtrak; (2) Amtrak shall identify its consultant of choice, taking into account suggestions, if any, by Class Counsel, and shall provide Class Counsel with the identity of the selectee and documentation or other information concerning the consultant’s qualifications, credentials, and experience; (3) Class Counsel shall review Amtrak’s selection and provide any comments concerning the selection to Amtrak within 10 days of receiving such information; (4) Amtrak shall consider the comments of Class Counsel in moving forward with the retention of the outside consultant; and (5) if Class Counsel raises concerns about Amtrak’s consultant of choice, and Amtrak, having considered such concerns, decides to proceed with the retention of such consultant, Amtrak shall so notify Class Counsel.

5. Computation of Time

In computing any period of time prescribed or allowed under this Decree, the period of time shall be computed in terms of calendar days unless otherwise specified.

6. Relationship to CBA

Until it is determined which, if any, of the provisions herein shall be incorporated into the CBA pursuant to Part V, the provisions herein shall control over and supercede the provisions in the CBA to

the extent of conflicts between them. To the extent that the CBA creates rights and obligations not addressed herein, those provisions shall continue in full force and effect.

B. Hiring

The following provisions shall apply to applicants for Positions, and shall not affect the movement of CBA-covered employees between Positions, except as noted.

1. Hiring of NEC Employees Covered by the CBA

a. Applicant Forms and Applicant Flow Database

Within six months after the Injunctive Effective Date, Amtrak shall develop and implement a revised application process and application tracking process as follows. Amtrak shall revise its application processes to provide that all candidates must submit application forms in order to be considered for open Positions. Amtrak will revise its application forms to include a portion that requests each applicant to identify the Position for which he or she is applying and to identify voluntarily his or her race, and will revise the structure of the form as necessary, in consultation with the Neutral Expert, such that the revised form will elicit information on ability to fulfill minimum job qualifications, and other matters recommended by the Neutral Expert to be included in the applicant flow computerized records.

In conjunction with the Neutral Expert, within nine months after the Injunctive Effective Date, Amtrak shall develop and implement a computerized applicant flow system for recording the demographic, minimum qualifications, and other relevant information received from applicants for purposes of tracking the job placement process and for monitoring purposes as described in Part IV(B)(1)(c) below.

b. Screening, Interviewing and Selecting Applicants

In consultation with the Neutral Expert and Class Counsel, within six months after the Injunctive Effective Date, Amtrak shall develop and implement standardized screening, interviewing and selection procedures, and assessment forms to be used in connection with the filling of Positions as follows.

Except as provided for herein, Amtrak shall not hire any external applicants for a Position until the Position has been advertised internally, and the Position has not been filled in accordance with the provisions of the CBA. If, after following these procedures, no Amtrak employee is awarded the Position, Amtrak shall so notify the BMW General Chairman or his designee and Class Counsel, or her designee, at least one week before Amtrak begins the process of interviewing external applicants for any Position. Amtrak's notice shall identify the race of each person to be interviewed, if known, and the number of persons of each race who applied for the Position to the extent that such information is known; and the number of persons of each race who met the minimum qualifications for the Position ("qualified applicants") as established pursuant to Part IV C(1). Amtrak shall also document in writing the rationale for selecting or not selecting for interview a particular candidate who meets the minimum

qualifications. The percentage of African Americans to be interviewed shall not be less than their percentage in the pool of qualified applicants with known race. If the BMW or Class Counsel notifies Amtrak that an insufficient number of African Americans have been selected for interview to meet the requirement of the preceding sentence, then Amtrak shall select additional African Americans until the percentage of African Americans selected for interview for that Position(s) equals the percentage of African Americans in the pool of qualified applicants for the Position. Amtrak shall make a good faith effort to contact all such supplemental qualified applicants and to include them in the interview process.

If in advance of the production season, Amtrak projects that there are an insufficient number of trackmen to meet the projected staffing needs, Amtrak may initiate the hiring process for external applicants prior to advertising such Positions internally; provided, however, that Amtrak will give written notice to General Chairman of the BMW, or his designee, at least 10 days prior to such advertising, identifying the number of trackmen vacancies to be filled, and shall promptly thereafter advertise those Positions internally in accordance with the CBA.

Applicants selected for interviews for Positions shall be interviewed by a panel consisting of one representative of Amtrak's Human Resources Department, one designated representative of the BMW, and one designated representative of the Engineering Department, unless the BMW declines to send a representative. Amtrak may conduct the interview and selection process without the participation of BMW if Amtrak has given notice to the General Chairman of the BMW, or his or her designee, at least 7 days before the scheduled interview and a BMW representative does not

appear at the interview. In addition to BMW's officers, the BMW may designate up to six Amtrak employees of diverse backgrounds, one in the production gang for the Northern district, one in the production gang for the Southern district, one in Boston, one in New York City, one in Philadelphia, and one in Baltimore/Washington, D.C., who will be available to act as the BMW representative in the interview and selection process. Amtrak may require such designees (other than BMW officers) to attend any training that Amtrak provides concerning its interviewing and selection processes.

Amtrak shall pay such employees for time spent in any such training and time spent traveling to and from such training, unless such time is not more than the employee's normal commuting time.

Amtrak shall develop standardized questions to be used by the panel in interviews of all applicants for a Position. Interviews by the panel shall be conducted using the same questions for all candidates for the same Position, insofar as feasible. The use of standardized questions shall not preclude reasonable follow-up questions by the interviewer. Amtrak shall develop standardized interview assessment forms to be used by panel members for employment interviews for Positions. The interviewers on the panel shall record their assessments of each candidate on a standardized form, before they discuss their assessments with other interviewers on the panel. The interviewers on the panel shall attempt to reach consensus on the candidates to be offered the jobs. If the interviewers on the panel cannot reach consensus, Amtrak shall make the selection.

Amtrak shall make an offer to the selected candidate, unless within one week after the decision is made, the BMW notifies Amtrak in writing that it is appealing the selection. Written notification

shall be sufficient if it is sent to Amtrak's internal Dispute Resolution Unit. The grounds for appealing the selection of a candidate to fill a Position shall be limited to the following: (1) Amtrak has selected a non-African American, and the BMWWE believes that one of the qualified African American applicants interviewed for the Position should have been selected; or (2) Amtrak has disproportionately selected non-African Americans from the pool of qualified applicants who were interviewed for the Position; or (3) Amtrak has selected a candidate whom the BMWWE reasonably believes, on the basis of prior conduct, interview statements, or other information, is hostile to African Americans.

An internal investigator in Amtrak's Dispute Resolution Unit shall conduct an investigation of the challenged selection. Within 20 days after the receipt of such notice, the Dispute Resolution Unit shall recommend that the hiring not proceed, that a comparable Position be offered to the African American candidate, that the offer be extended to the selected candidate, or that the Position not be filled pending further investigation.

Class Counsel may bring an enforcement action pursuant to Part XI of this Decree if, in its opinion, Amtrak has: (1) unreasonably denied the BMWWE appeals regarding selection of candidates to fill Positions; (2) disproportionately selected non-African American candidates for such Positions; or (3) selected candidates who, based on prior conduct, interview statements, or other information, are reasonably believed to be hostile to African Americans. The Human Resources office shall maintain all records and forms used during the screening, interview, and selection process for two years. Such records and forms shall be available for review by Class Counsel.

Amtrak shall attempt in good faith to notify all applicants not selected for a Position for which they applied within one month after the decision has been made, unless there are more than 100 applicants, in which case notice shall be unnecessary.

c. Monitoring of Job Placements

Amtrak shall record in computer-readable format the race of applicants selected for interviews for Positions that it seeks to fill, and the race of the persons offered and ultimately selected to fill such Positions, to the extent that applicants provide information concerning their race to Amtrak. Amtrak shall commence recording the data on the first day of the second quarter after the Injunctive Effective Date. Amtrak shall review this placement data every six months to determine whether there is a Statistically Significant disparity between the offer rate of qualified white applicants and the offer rate of qualified African American applicants. The Neutral Expert shall assist Amtrak in determining the factors to be controlled for, and the formula to be used to determine if statistically significant disparities exist.

If, according to the formula devised by the Neutral Expert, a Statistically Significant disparity exists, Amtrak shall proffer a written explanation for the disparity to Class Counsel within 30 days of such discovery. In addition, if any such disparity exists, the Director of Amtrak's Dispute Resolution Unit, or his or her delegate, shall become part of the screening, interviewing, and selection process described above until the disparity has disappeared for a period of at least six months. As part of its

role in the screening process, the Dispute Resolution Unit shall determine whether African Americans were underrepresented in the pool of qualified applicants for the vacancy in question. If such underrepresentation has occurred, Amtrak shall make use of additional recruitment sources, including those reasonably recommended by Class Counsel, to increase the number of qualified African Americans in the pool of candidates.

If the statistical disparity continues during the six month period following the discovery of the Statistically Significant Disparity, then the Parties shall attempt to reach voluntary agreement on appropriate, additional remedial measures. If the Parties are not able thereafter to voluntarily reach agreement on appropriate remedial steps, Class Counsel may seek enforcement pursuant to Part XI of this Decree.

2. Hiring of MBTA Amtrak Employees Covered by the CA

The foregoing provisions of Part B(1)(a) relating to Applicant Forms and Applicant Flow Database and of B(1)(c) relating to Monitoring of Job Placements shall also apply to applicants for Positions covered by the CA in Amtrak MBTA service, to the extent that Amtrak continues to provide MBTA service. With respect to Screening, Interviewing and Selecting Applicants, the following provisions shall apply:

In consultation with Class Counsel and the Neutral Expert, if the Parties deem necessary, within six months after the Injunctive Effective Date, Amtrak shall develop and implement the same standardized screening, interviewing and selection procedures, and assessment forms to be used in

connection with the filling of Positions as is to be implemented for other covered Positions under Part B(1)(b).

Except as provided for herein, Amtrak shall not hire any external applicants for a Position until the Position has been advertised internally, and the position has not been filled in accordance with the provisions of the CA. If, after following these procedures, no Amtrak employee is awarded the position, Amtrak shall so notify Class Counsel at least one week before Amtrak begins the process of interviewing external applicants for any Position. Amtrak's notice shall identify the race of each person to be interviewed, if known, and the number of persons of each race who applied for the Position to the extent that such information is known; and the number of persons of each race who met the minimum qualifications for the Position ("qualified applicants") as established pursuant to Part C(1). Amtrak shall also include in the notice the rationale for selecting or not selecting for interview a particular candidate who meets the minimum qualifications. The percentage of African Americans to be interviewed shall not be less than their percentage in the pool of qualified applicants with known race. If Class Counsel notifies Amtrak that insufficient African Americans have been selected for interview to meet the requirements of the preceding sentence, then Amtrak shall select additional African Americans until the percentage of African Americans selected for interview for that Position(s) equals the percentage of African Americans in the pool of qualified applicants for the Position. Amtrak shall make a good faith effort to contact all such supplemental qualified applicants and to include them in the interview process.

If in advance of the production season, Amtrak projects that there are an insufficient number of trackmen to meet the projected staffing needs, Amtrak may initiate the hiring process for external applicants prior to advertising such Positions internally; provided, however, that Amtrak will give written notice to General Chairman of the BMW, or his designee, at least 10 days prior to such advertising, identifying the number of trackmen vacancies to be filled, and shall promptly thereafter advertise those Positions internally in accordance with the CA.

Applicants selected for interviews for Positions shall be interviewed by a panel consisting of one representative of Amtrak's Human Resources Department, Class Counsel's designee, and one designated representative of the Engineering Department. Amtrak may conduct the interview and selection process without Class Counsel's designee if Amtrak has given notice to Class Counsel and her designee at least 7 days before the scheduled interview and Class Counsel's designee does not appear at the interview.

For purposes of this Part, Class Counsel's designee shall be an Amtrak employee jointly designated by Class Counsel and Amtrak, and the initial designee shall be named within 10 days of the Injunctive Effective Date. Class Counsel's designee shall be provided training by Amtrak concerning its interviewing and selection processes. Amtrak shall pay Class Counsel's designee for time spent in any such training and time spent traveling to and from such training, unless such time is not more than the employee's normal commuting time. Class Counsel's designee shall also be given appropriate time off from his or her regular responsibilities to participate in training and in interviewing.

Amtrak shall develop standardized questions to be used by the panel in interviews of all applicants for a Position. Interviews by the panel shall be conducted using the same questions for all candidates for the same Position, insofar as feasible. The use of standardized questions shall not preclude reasonable follow-up questions by the interviewer. Amtrak shall develop standardized interview assessment forms to be used by panel members for employment interviews for Positions. The interviewers on the panel shall record their assessments of each candidate on a standardized form, before they discuss their assessments with other interviewers on the panel. The interviewers on the panel shall attempt to reach consensus on the candidates to be offered the jobs. If the interviewers on the panel cannot reach consensus, Amtrak shall make the selection and shall notify Class Counsel and Class Counsel's designee of the decision.

Amtrak shall make an offer to the selected candidate, unless within one week after the decision is made, Class Counsel notifies Amtrak in writing that Class Counsel is appealing the selection. Written notification shall be sufficient if it is sent to Amtrak's internal Dispute Resolution Unit. The grounds for appealing the selection of a candidate to fill a Position shall be limited to the following: (1) Amtrak has selected a non-African American, and Class Counsel believes that one of the qualified African American applicants interviewed for the Position should have been selected; or (2) Amtrak has disproportionately selected non-African Americans from the pool of qualified applicants who were interviewed for the Position; or (3) Amtrak has selected a candidate whom Class Counsel reasonably

believes, on the basis of prior conduct, interview statements, or other information, is hostile to African Americans.

An internal investigator in Amtrak's Dispute Resolution Unit shall conduct an investigation of the challenged selection. Within 20 days after the receipt of such notice, the Dispute Resolution Unit shall recommend that the hiring not proceed, that a comparable Position be offered to the African American candidate, that the offer be extended to the selected candidate, or that the Position not be filled pending further investigation.

Class Counsel may bring an enforcement action pursuant to Part XI of this Decree if, in its opinion, Amtrak has: (1) unreasonably denied appeals regarding selection of candidates to fill Positions; (2) disproportionately selected non-African American candidates for such Positions; or (3) selected candidates who, based on prior conduct, interview statements, or other information, are reasonably believed to be hostile to African Americans. The Human Resources office shall maintain all records and forms used during the screening, interview, and selection process for two years. Such records and forms shall be available for review by Class Counsel.

Amtrak shall attempt in good faith to notify all applicants not selected for a Position for which they applied within one month after the decision has been made, unless there are more than 100 applicants, in which case notice shall be unnecessary.

Nothing in this provision shall modify any existing role played by any representatives of the BMWE or affiliate of the BMWE with respect to hiring pursuant to any other agreement or arrangement, except to the extent expressly set forth above.

3. Hiring of ARASA Supervisors Who Supervise Members of the NEC BMWE

a. Procedures for Hiring

The hiring of ARASA supervisors is governed by the ARASA collective bargaining agreement. The provisions set forth herein are applicable to the hiring of ARASA supervisors who are responsible for supervising employees in Positions. But these provisions are not intended to modify, alter, or amend any provisions of the ARASA collective bargaining agreement.

All vacancies for ARASA supervisory positions that are responsible for supervising employees in Positions shall be posted and distributed in accordance with the procedures regarding Advancement that are set forth under Part IV C of this Decree. If a vacancy is not filled by a current ARASA member as provided in the ARASA collective bargaining agreement, then the following procedures shall apply. The Amtrak Engineering Department and Human Resources representatives who participate in the ARASA panel selection process shall use standardized questions in interviewing all qualified applicants for the particular vacancy. The Engineering Department and Human Resources representatives shall each document in writing their justifications for selecting the candidate who is ultimately selected for the vacant position. Such documentation shall be accessible to Class Counsel.

If the panel selects a non-African American applicant for the supervisory position, rather than

an African American applicant whom the Human Resources representative determines to be equally or more qualified, then the selection must be reviewed and approved by the Senior Director, Dispute Resolution Unit before it can proceed. If the Senior Director, Dispute Resolution Unit approves the selection of the non-African American employee and Class Counsel disagrees with the approval, then Class Counsel may seek Enforcement pursuant to Part XI of this Decree.

b. Monitoring

Within six months of the Injunctive Relief date, Amtrak shall develop and implement a system for tracking applicants for, and those hired in, ARASA for those positions that supervise employees in Positions, in consultation with the Neutral Expert and Class Counsel. Beginning at the conclusion of the first quarter after the applicant tracking system is in place, the Director, Dispute Resolution Unit shall produce quarterly reports analyzing the data to Class Counsel.

C. Qualifications, Testing and Advancement

1. Standardized Qualifications

a. Revision and Standardization of Classification Descriptions

On or before June 15, 2000, Amtrak shall set qualifications for each classification in the CBA, and shall identify any qualifications that may differ from Position to Position within the same classification. Once set, Amtrak shall not alter the qualifications for any classification without first consulting the BMW and Class Counsel. Provided, however that any classifications may be altered without consulting the BMW and Class Counsel to the extent required by governmental law or regulation, in which case Amtrak shall notify the BMW and Class Counsel of the change and the legal requirement. Absent agreement, Amtrak shall have the ultimate authority to set such qualifications. If after consultation, the BMW and Class Counsel do not concur with any Amtrak modification to qualifications, Class Counsel may seek enforcement under the provisions of Part XI of this Decree. Class Counsel may also pursue enforcement if the initial qualifications set by Amtrak have a racially

disparate impact on African Americans without adequate business justification.

b. Posting of Job Qualifications and Challenges thereto

Amtrak shall post all vacancies and/or Positions in accordance with the CBA or CA. Such postings shall prominently display the requisite standardized qualifications for the Position. Amtrak need not consult with the BMWWE as to the required qualifications for any Position, unless the qualifications are not within those qualifications previously set for the classification by Amtrak, or identified by Amtrak as a qualification that may differ from Position to Position within the same classification.

A BMWWE represented employee may challenge the posting on the ground that it has been crafted to make only one or several favored persons qualified for the Position covered by the job posting. Absent informal resolution of such claims, the procedure for asserting such a challenge shall be as follows:

- a. The BMWWE represented employee must file a written challenge with the Vice President of Human Resources (VP of HR) within the 7-day period for responding to a posted job vacancy.
- b. The VP of HR shall have 10 business days from the date that the challenge is received to resolve or rule on the challenge.
- c. If the VP of HR cannot resolve the challenge or overrules the challenge, and the BMWWE represented employee's claim is that the crafting of the posting was racially motivated, then such employee shall have 7 business days from the day that he/she receives notice of the ruling by the VP of HR to file a written appeal with the Senior Director, Dispute Resolution. If the employee's claim is not based on an allegation of racial motivation, the decision of the VP of HR shall be the final decision.

- d. The Senior Director, Dispute Resolution shall have 20 business days from the day that the written appeal is received to resolve or decide the appeal.
- e. If the VP of HR or the Senior Director, Dispute Resolution determines that the challenged posting was crafted to make only one or several favored persons qualified for the Position covered by the posting, Amtrak shall revise the posting, and vacate, repost, and refill the Position.
- f. At any time during the course of the procedures set forth above, the employee and Amtrak may settle the employee's claims without exhausting such procedures.

2. Standardized Administration of Tests

a. Qualified Examiners

All practical competence tests shall be administered by qualified examiners. Amtrak shall maintain a list of qualified examiners that enumerates the tests each is qualified to give and provides their phone numbers and addresses. Amtrak shall maintain and update this list promptly when any information becomes outdated. Amtrak shall distribute updated lists to the General and Vice Chairmen of the BMWF and shall post such lists in the same location where job vacancies and other BMWF announcements or advertisements are posted in the NEC.

There shall be a minimum of fourteen examiners for equipment and machine operator classifications and Positions ("equipment instructors") -- two for the MBTA, three in the Northern District, two in the New York-Metropolitan District, four in the Mid-Atlantic District, and three for District work teams (collectively the "testing districts") -- unless either there is not sufficient work to fully employ that number of examiners for a period of 6 consecutive months during any production

season. In the event Amtrak no longer employs the maintenance of way workers in MBTA service, those two slots will be eliminated. Amtrak may supplement equipment instructor slots in any of the testing districts.

As of October 1999, Amtrak had eight equipment instructors who were management employees (“management equipment instructors”). Amtrak shall fill all open examiner Positions with non-management employees (“BMWE equipment instructors”), until there are an equal number of management and BMWE equipment instructors. Amtrak is not required to displace current management employees in order to meet such target. Thereafter, Amtrak shall employ an equal number of management and BMWE equipment examiners, plus or minus one person, provided that there shall always be at least one BMWE equipment instructor in each of the testing districts.

The job description and qualifications for the equipment instructors who hold the BMWE Positions, and any alterations or modifications thereto, shall be established by Amtrak, in consultation with the BMWE. Absent agreement, Amtrak shall have the ultimate authority to set such qualifications.

Amtrak shall have sole authority to select the management equipment instructors, provided that all such persons must meet the job qualifications established by Amtrak. In consultation with Class Counsel, Amtrak and the BMWE shall jointly select the BMWE equipment instructors, provided that Class Counsel and the BMWE together shall constitute one party. If either party rejects a person proposed by the other as a BMWE equipment instructor, such party shall provide a written explanation to the other. The BMWE may appeal in writing to the Senior Director, Dispute Resolution Unit, if

Amtrak rejects an African American candidate who meets all of the qualifications in the job description. The Senior Director, in consultation with the Vice President, Business Diversity, shall decide within 15 days of receipt of the appeal whether Amtrak's rejection of the candidate is warranted. If the Dispute Resolution Unit determines that such rejection is without sufficient justification, then the Vice President Business Diversity shall recommend hiring of the African American candidate. If the Dispute Resolution Unit determines that the rejection is sufficiently justified, and Class Counsel disagrees, then the enforcement procedures under Part XI shall be applicable.

To the extent that additional training is necessary before an equipment instructor is qualified to administer tests for certain pieces of equipment or machinery, Amtrak shall make available to the BMW equipment instructors the same opportunities for training that it makes available to management equipment instructors. The compensation of BMW equipment instructors as of the Injunctive Effective Date shall be higher than the rate for the highest rated machine operator Positions, and similar to the rate for Technicians under the CBA.

Each BMW equipment instructor shall remain in the Position for a term of two years, unless removed from the Position for cause, and may serve any additional terms for which he or she is jointly selected by Amtrak and the BMW. Any BMW equipment instructor shall retain and continue to accumulate seniority in the class or classes in which he or she held seniority under the CBA or CA prior to selection. Any such employee may exercise seniority in accordance with the provisions of Rules 22 of the CBA and Rule 34 of the CA, provided that he or she reports for duty within thirty (30) days after

the expiration, or earlier termination, of his or her term as a BMW E equipment instructor.

b. Forms for Practical Tests

On or before June 15, 2000, Amtrak shall develop, in consultation with Class Counsel and the BMW E, standardized forms for all practical tests used to determine qualification for any classification or type of equipment or machinery within a classification. As of the Injunctive Effective Date, the equipment instructors shall use the then current version of the form in administering all practical tests, regardless of the testing district.

A form may apply to more than one classification or type of equipment or machinery. The forms shall identify all skills and abilities to be tested and shall require examiners to note the performance of the candidate with respect to each of these skills and abilities.

A committee composed of an equal number of management and BMW E equipment instructors shall be responsible for all subsequent modifications of the forms used for equipment and machine operator Positions. Amtrak shall select the management equipment instructors to serve on the committee. Amtrak and the BMW E shall jointly select the BMW E equipment instructors to serve on the committee. The committee members shall attempt to agree on all modifications to the form. Absent agreement, Amtrak shall have the ultimate authority to make modifications to the form, and Class Counsel may bring an enforcement action, if appropriate, pursuant to Part XI of this Decree.

c. Administration of Practical Tests

Amtrak shall administer a practical test to any employee in a Position who submits a written request to take such a test, and has not failed the same practical test within six (6) months prior to the request, other than retests as set forth below. If an employee in a Position who requests a test has failed three or more tests and retests for the same or different Positions outside their current classification without passing a test or retest during the two years prior to the making of the request, Amtrak will notify the BMW E General Chairman, or his or her designee, that it is declining to offer the

test, because it believes that the employee is requesting testing without acquiring the necessary skill for passing the test. Class Counsel may bring an enforcement action pursuant to Part XI of this Decree if, in its opinion, Amtrak has: (1) unreasonably denied an African American employee in a Position a test or retest opportunity; or (2) disproportionately invoked this provision against African American employees in a Position.

Where an employee in a Position makes a request to take a practical test, Amtrak shall administer the test within 15 days after it receives such a request. Amtrak shall administer the tests in the order that written requests are received within a testing district, except that retests, as described below, shall have priority. In addition, Amtrak may administer a practical test to any candidate who has completed a training program or a one-for-one training opportunity, as described below, at any time after the completion of such program or opportunity, whether or not the candidate requests the test. Employees in a Position shall be compensated for the time spent in taking the test or retest.

Regardless of whether the administration of a practical test is initiated by an employee in a Position or by Amtrak, Amtrak shall provide to the employee reasonable advance notice of the time and place for the test and the identity of the examiner. The employee in a Position may elect that the test not occur until at least seven days from the date of notice. The candidate may have a witness present during the test, provided that the witness may not give the candidate any advice during the test. Amtrak will pay the witness for time spent serving as a witness, provided however, that Amtrak may decline to pay an employee to witness more than one test in any day or two tests in any week. At the conclusion of the test, the examiner may, but need not, inform the candidate whether the candidate passed the test, and if not, of the skills and abilities that the candidate did not adequately exhibit.

Within five days after taking the test, Amtrak shall notify the candidate whether he or she passed the test. The notice shall be in writing and signed by the examiner. If the candidate failed the test, the notice shall inform the candidate of the skills and abilities that the candidate did not adequately exhibit, and shall advise the employee of his or her right to take a retest. The notice shall also include a form on which the candidate may elect to waive his or her right to a retest.

If the candidate chooses to be retested, the retest shall be monitored by an Amtrak manager and the General Chairman of the BMW, or his or her designated representative. It shall be the responsibility of the employee in a Position who is requesting the retest to notify the General Chairman of the BMW, or his or her designated representative, of the date and time of the retest, and the failure of the General Chairman, or his or her representative, to be present at the retest shall not be a basis for rescheduling or delaying it. The candidate shall select the examiner to administer the retest from the group of qualified examiners. If the retest is for a machine or equipment operator Position, the examiner shall be from the testing district in which the candidate is located. The retest shall be administered within 15 days of the original test. The candidate and the General Chairman of the BMW, or his or her designee, shall be notified in writing of the results of the retest within five days after the taking of the retest. The notice shall be signed by the examiner, and if the candidate failed the retest, the notice shall inform the candidate of the skills and abilities that the candidate did not adequately exhibit.

If the candidate remains dissatisfied, the BMW may file a grievance pursuant to Rule 64 of the CBA (or a BMW affiliate may file a grievance pursuant to the analogous provision of the CA) commencing at the Director of Labor Relations level. The time period for submitting a grievance shall commence on the day the candidate is notified in writing that he or she failed the retest.

d. Written Tests

The procedures set forth above for requesting practical tests shall apply to written tests also, except as modified herein.

Amtrak shall not be required to consult with equipment instructors concerning the content of written tests for determining employees' qualifications for classifications or Positions.

Amtrak shall not use any written tests that are not validated within 6 months from the Injunctive Effective Date. Class Counsel may raise a challenge with the Amtrak Director, Dispute Resolution Unit, to any written test administered after 6 months from the Injunctive Effective Date, on the basis that, even though validated, it has a disparate impact on, or for other reasons has the purpose or effect of disproportionately eliminating African American test-takers. The standards and methodology for validation shall be those set forth in the Uniform Guidelines, 29 CFR § 1607 *et seq.* If a validated test does have such disparate impact, Amtrak shall be required to discontinue or replace it if, after Amtrak makes a reasonable search, it becomes aware of an "alternative employment practice" as that term is defined under the Civil Rights Act of 1991. 42 U.S.C. § 2000e-2(k)(1)(A)(ii) & 2(k)(1)(C).

Amtrak shall make special arrangements with the General Chairman of the BMW, or his or her designee, for employees in a Position who are not functionally literate to take a written test where

the Position they seek does not require literacy.

Amtrak shall notify a candidate whether he or she passed the written test within 10 days of the date that the test is taken. The notice shall be in writing and signed by the examiner. If the candidate failed the test, the notice shall also inform the candidate of the skills and abilities that the candidate did not adequately exhibit, and shall advise the candidate of his right to take a retest. The notice shall also include a form on which the candidate may elect to waive his or her right to take a retest. The time for the written retest shall be determined according to division policies, not to exceed 30 days from the original test date.

If the candidate chooses to be retested, Amtrak shall notify the candidate in writing of the results of the retest within 10 days after the retest is taken, and, if the candidate fails the retest, the notice shall inform the candidate of the areas in which the employee did not pass. If the candidate remains dissatisfied, the BMWWE may file a grievance pursuant to Rule 64 of the CBA (or a BMWWE affiliate may file a grievance under the analogous provision of the CA) commencing at the Director of Labor Relations level. The time period for submitting a grievance shall commence on the day the candidate is notified in writing that the candidate failed the retest.

e. Effect of Passing Re-test

With respect to a “one-on-one” training opportunity, if a BMWWE represented employee fails a test and then passes the retest, the employee’s seniority date shall be considered the date of the original award of the training Position. For all other tests, if a BMWWE represented employee fails a test and then passes the retest, and if a Position for which the employee would otherwise have qualified and been the senior applicant is awarded before the retest, Amtrak shall undo the award and place that employee in such Position. If an award has been made in the interim, and the junior employee awarded the job is African American, then the Department shall notify the Vice President Business Diversity or her designee, who shall have 10 days to review the circumstances of the retest, and if the investigation

reveals any race-based motivations for the retest or displacement, to make recommendations, which may include any remedy available under the procedures of Part IV E.

3. Standardized Notification of Vacancies

In addition to the current notice requirements under the CBA and CA, Amtrak shall institute and maintain an “800” telephone number, which shall advise the caller of all vacancies for Positions. The recording on the “800” telephone shall be updated weekly. All vacancies announced on the “800 number” shall remain open for application for at least 7 days following their inclusion in the recording. Although Amtrak is working toward an on-line announcement of all such vacancies, in no event shall the on-line database replace the “800” number given the transient nature of corridor track work. In addition, on a weekly basis, Amtrak shall mail written notification of all vacancies and awards to the following BMWWE represented employees: one designated representative per traveling (corridor) work gang; all safety liaisons; all quality of life coordinators; and one representative per work zone per department. The BMWWE shall be responsible for providing to Amtrak the names and addresses of the employees who are to receive the written notification as described above, and for notifying Amtrak of any changes in the names or addresses. Provided that the BMWWE has met its obligation to provide the required information to Amtrak, Amtrak shall be considered in violation of the Decree if, after being notified in writing that it failed to satisfy this provision, it repeats such failure two additional times within any 6 month period.

4. Monitoring for Uniformity of Test Access and Results

Within six months from the Injunctive Effective Date, Amtrak shall devise, implement and

maintain a computerized system for recording and tracking administration and results of qualifications tests for Statistically Significant disparities, if any between passage rates of black and non-black employees in Positions. Amtrak shall devise such system in consultation with Class Counsel and the Neutral Expert.

5. Standardized Training

a. Training Administrator

Amtrak shall designate at least one employee whose responsibilities shall include the coordination and administration of all training activities for employees under the CBA. Amtrak shall identify the employee who will serve as the Training Administrator (or similar title) within 30 days of the Injunctive Effective Date, and shall post the identity, business address, and telephone number (which shall be a toll-free number) of such individual, and a description of his or her duties. This information shall be posted at all locations in the NEC where BMWWE announcements or advertisements are posted. Amtrak may change the identity of the Training Administrator at any time, or may designate more than one Training Administrator by providing an administrator for each region or district. If any new or additional Training Administrators are designated, Amtrak shall expeditiously post the identity of the new or additional Training Administrator and the other information set forth above.

b. Types of Training Opportunities

Amtrak shall make available on a non-discriminatory basis only the following types of maintenance of way training opportunities, provided however, that nothing herein shall be deemed to

deny employees in Positions educational or other like benefits available on a non-discriminatory basis to all Amtrak employees. Amtrak shall not deny any employee in a Position an opportunity to attend the training opportunities set forth below for which he or she is scheduled based on workload or other demands, provided that such employee gives his manager or supervisor at least seven days written notice that he or she will be attending the program. Provided, however, that in order to meet unforeseeable and indispensable operational demands, Amtrak may postpone training opportunities for as many similarly situated employees at a location as are necessary to meet that demand, and shall select the employees who may attend on a seniority basis. If invocation of this exception by supervisors occurs without sufficient business justification and impedes training opportunities for African American employees, then it may constitute an incident for purposes of pattern and practice investigations pursuant to Part E(5) of this Decree. Any employee in a Position whose training is postponed pursuant to the above exception shall be provided the training in the next scheduled training class or, in the case of one-for-one training no later than six weeks after the originally scheduled training.

(1) NORAC

(a) Initial four-day training program

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall make available, through a posting by location, 310 slots in the initial four-day NORAC training program.

Employees in a Position shall send requests for the initial NORAC training program in writing directly to the designated Training Administrator. The Training Administrator shall fill these training slots

on the basis of seniority within the BMW NEC.

(b) NORAC recertification

The Training Administrator shall inform employees in a Position who contact him or her of the time and location of NORAC recertification classes and of the telephone number or other means to contact the instructors of the classes. Such employee, however, is obligated to make arrangements with the instructor to schedule him or herself into the class in a timely manner.

(2) Physical Characteristics Training

Under certain circumstances set forth below, Amtrak shall give employees in a Position an opportunity to learn the physical characteristics of a segment of track. The training opportunity shall include:

- (a) sufficient paid time off from the employee's normal responsibilities to learn the physical characteristics;
- (b) prompt provision from the Training Administrator to the candidate of copies of the track charts for the segment of track in issue; and
- (c) the opportunity to ride the trains and/or walk over that segment of track.

The circumstances under which employees in a Position shall be offered this opportunity for physical characteristics training are as follows:

- (a) An employee who has been accepted into MW1000 school shall be offered an opportunity for physical characteristics training prior to the commencement of

the school;

- (b) If Amtrak posts a foreman Position and no qualified bidder has the requisite physical characteristics qualifications, the senior applicant with all other qualifications shall be given up to 7 days to obtain qualification on physical characteristics, and Amtrak will delay the award of the Position for up to 7 days to accommodate such employee;
- (c) Amtrak shall afford a foreman who bumps a junior foreman within the ten-day window provided under the CBA (or under Rule 7 of the CA) the opportunity to obtain qualification on the physical characteristics needed for the Position during the same ten-day window; and
- (d) Amtrak shall afford African Americans working in foreman Positions as of the Injunctive Effective Date one opportunity each per year to expand their physical characteristics qualifications during the first two years of the Decree.

In all of the circumstances described above, the employee must obtain the physical characteristics qualification prior to beginning work in the Position.

(3) Commercial Drivers' License ("CDL") Opportunities

Whenever Amtrak determines to offer CDL training opportunities within a particular zone, it shall offer the opportunities according to Rule 3 of the CBA and the analogous provision of the CA. Amtrak shall give eligible BMWWE represented employees seeking to obtain a commercial driver's

license paid time off to take the test, an operator to drive the employee and the truck to the test, and shall pay for the test and license fee. Requests for vehicle use, paid time off in order to take the test, and payment for the test and license fee shall be submitted in writing to the designated Training Administrator, who shall resolve any conflict in availability in accordance with Rule 3 of the CBA (or the analogous provision of the CA). The Training Administrator shall maintain a list of persons requesting CDL training opportunities for each work zone, arranged in order of seniority at Amtrak. An employee shall be treated in accordance with Rule 6 of the CBA or Rule 8 of the CA if, after receiving such an opportunity, he or she does not obtain a CDL license. If, in Amtrak's view, employees in a zone fail to make themselves available for positions requiring CDLs after obtaining CDL training, Amtrak may discontinue CDL training in that zone.

If Amtrak posts a Position requiring a CDL license and no qualified bidder has the requisite CDL, Amtrak shall award the Position on a provisional basis, pending acquisition of the CDL, to the senior bidder who has all other qualifications, and that employee shall be granted 45 days following appointment to obtain the CDL qualification. An employee who obtains his/her CDL pursuant to this paragraph will be obligated to remain in the Position for at least 6 months after obtaining the CDL, unless he/she is bumped by a more senior employee or terminates his/her employment with Amtrak.

In all of the circumstances described above, the employee must obtain the CDL prior to beginning work in the Position.

(4) Training Slots under the Training Agreement

Amtrak shall continue training programs pursuant to the 1977 Training Agreement, and shall supplement all current programs under the Agreement with the programs enumerated below. Slots will be awarded on the basis of seniority of those interested. All training under the Training Agreement shall be of sufficient duration and substance such that employees in a Position who participate can reasonably be expected to pass an examination.

(a) Foreman

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide 125 foreman training slots in the Southern District of the NEC, 40 within the Northern District,

and 10 within the MBTA.

(b) Crane Operators

(1) burro, crawler, jumbo, portal, & kiro

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide for the above category of cranes the following training slots: 8 in the Southern District; 2 in the Northern District; and 2 in the MBTA.

(2) smaller, hydraulic cranes like pettibone & speed

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide for the above category of cranes the following training slots: 4 in the Southern District; 4 in the Northern District; and 2 in the MBTA.

(c) General Construction Equipment

General construction equipment includes machinery in the category of backhoes, bulldozers, front-end loaders, bob cats, load graders, and the like. During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide for the above category of equipment the following training slots: 10 in the Southern District; 10 in the Northern District; and 4 in the MBTA.

(d) Structural welders

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide 25 training slots for structural welders.

(e) Arc welders

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide 15 training slots for arc welders.

(f) Bute or thermite welders

During the first two fiscal years beginning after the Injunctive Effective Date, Amtrak shall provide 20 training slots for bute or thermite welders.

(5) Electric Traction Department Training

All trainee Positions for the Electric Traction Department shall be bulletined in accordance with Rules 3 and 14 of the CBA before applicants external to the BMWWE can be considered for the slots. Amtrak may uniformly subject all applicants to a pre-screening test prior to awarding such Positions. The trainee Positions shall be awarded to the successful bidders who pass such test according to seniority in the Track Department.

(6) One-for-One Training Opportunities

If no qualified employee bids for a Position, and there are no employees subject to assignment under the training agreement, the Position shall be automatically converted into a one-for-one training opportunity, and shall be awarded to the BMWWE applicant with first seniority in the class in which the assignment is to be made, and thereafter, in lower classes respectively in the order in which they appear on the seniority roster. The Position shall be posted in accordance with Rules 3 and 14 of the CBA (or the analagous provision of the CA). If there is no applicant in the applicable roster, then eligibility shall

be determined according to the date applicants entered service in a Position. Such senior applicant shall be trained for up to thirty days, at the end of which period he or she may, where appropriate, be required to take an examination to demonstrate his or her qualifications.

If an employee in a Position who receives one-for-one training lacks a roster date in such classification, and subsequent to the training the employee passes the test (or retest), or if forty days pass and Amtrak has not tested the employee, the employee's roster date shall be the date that Amtrak awarded the training Position. An employee who fails a test (and retest unless such right is waived by the employee) shall be treated in accordance with Rule 6 of the CBA (or the analogous provision of the CA), and the Position shall be reposted.

Certain Positions shall be exempt from one-for-one training. These Positions are: foremen, welders, MW repairmen, electricians, B&B mechanics, plumbers, cranes, and the following general construction equipment Positions: operators of backhoes, bulldozers, front-end loaders, bob cats, load graders, and similar construction equipment.

(7) Cross-Training

Cross-training shall be permitted only in limited circumstances where there are insufficient qualified operators for a piece of equipment and none of the training procedures described above will be sufficient to fill the need. Prior to implementing any cross-training, Amtrak will consult with the General Chairman of the BMW, or his or her designated representative, regarding the need for additional qualified operators for a piece of equipment, the basis for believing that none of the training procedures described above would be sufficient, and the procedure for selecting persons to be cross-trained.

c. Training Materials

Amtrak shall make available, upon written request of any employee in a Position, written

training materials, including but not limited to the track charts, concerning any classification or job for which materials have been prepared. Amtrak may revise the training materials regarding any classification or job from time to time as it deems appropriate, provided that the materials shall contain sufficient information to pass any written portions of any test and provided that, if a classification or job is covered by the Training Agreement, the materials shall be the same as, or similar to, the materials provided to persons trained under the Training Agreement for that classification or job. Subject to Amtrak's right to revise materials, Amtrak shall provide all employees in a Position requesting training materials with the same documents.

The Training Administrator shall be responsible for mailing requested training materials to an employee within 10 days of receiving a written request for such materials from an employee.

d. Monitoring

Within six months after the Injunctive Effective Date, Amtrak shall devise, implement and maintain, a computerized system for recording and tracking training opportunities for Statistically Significant disparities in the provision of training. Amtrak shall devise such system in consultation with the Neutral Expert and Class Counsel.

e. Amtrak MBTA Operations

The foregoing provisions on training shall be applied to Amtrak operations under contract to the MBTA, including the provisions in Part IV C(5)(b)(4) ("Training Slots under the Training Agreement") which will be governed by the 1977 Training Agreement during the period of the Consent Decree. While the Consent Decree is in force the appropriate BMWF organization and Amtrak shall bargain in good faith concerning the extensions of the 1977 Training Agreement to the CA.

D. Discipline

1. Investigation of Charges of Disparate Discipline

a. Disparate Initiation of Discipline

Amtrak's Dispute Resolution Unit shall investigate all complaints that an Official initiated a charge against an African American employee in a Position, but did not initiate a charge against a similarly situated non-African American employee in a Position who engaged in similar conduct. The Dispute Resolution Unit shall also investigate complaints that Amtrak's drug and alcohol policy has

been applied more severely against an African American employee than a non-African American employee within Positions.

b. Disparate Provision of Waivers

Amtrak's Dispute Resolution Unit shall investigate all complaints that an Official made a final waiver offer to an African American employee in a Position encompassing greater discipline than a waiver offered by that Official to a similarly situated non-African American employee in a Position. The Dispute Resolution Unit shall also investigate complaints that an

Official did not make a final waiver offer to an African American employee in a Position, but such Official did make a waiver offer to a similarly situated non-African employee in a Position. The Official who is the subject of the complaint shall provide written justification for his or her action to the Dispute Resolution Unit within 10 business days after receiving notice of the complaint.

c. Imposition of Penalties

The Dispute Resolution Unit shall conduct investigations into complaints made by an individual employee in a Position or the BMW of America that an Official imposed harsher discipline on an African American employee in a Position than on a similarly situated non-African American employee in a Position.

d. Complaints

Complaints brought pursuant to Subparts a-c above may be initiated by the employee in a Position or the BMW of America. For each, the Official who is the subject of the complaint shall provide written justification for his or her action to the Dispute Resolution Unit within 10 business days after receiving notice of the complaint.

2. Remediation of Disparity

Following investigation into a complaint of disparate treatment as identified in Part IV D(1) above and a determination that the justification for the disparate treatment is insufficient, the Dispute Resolution Unit may recommend: (a) that the initiation of discipline, with the exception of anything associated with an investigation conducted by the Inspector General, be halted; (b) that a comparable waiver be offered to the African American employee in a Position; or (c) that the level of discipline imposed on an African American employee in a Position be the same as that imposed on a similarly situated non-African American employee in a Position. In each instance, the African American employee in a Position shall be retroactively provided the benefit of the lesser action, including compensation for any loss in pay, benefits, and seniority. In none of the situations identified above shall the investigation result in imposition or initiation of discipline against the non-African American employee in a Position

who is identified in the complaint as the similarly situated employee, if the applicable time limits for discipline under the CBA or CA have expired.

3. Discipline of Officials

After completing an investigation of a complaint of disparate treatment as identified in Parts IV D(1) above and a determination that the justification for the disparate treatment is insufficient, the Senior Director, Dispute Resolution Unit may make a recommendation for sanctions, up to and including termination, of an Official where the record supports a complaint of disparate initiation of the disciplinary process or drug and alcohol policy, disparate use of waivers, or disparate imposition of penalties. Such recommendation shall be made to an Official with authority to impose sanctions or initiate disciplinary proceedings. The Official who receives the recommendation shall have 30 days to accept or reject the recommendation. If the recommendation is rejected, the Official shall provide written justification for the rejection to the Vice President Business Diversity, the Vice President Human Resources, and the Vice President Law. If the Official fails to act or to supply such written justification, the Dispute Resolution Unit Senior Director shall immediately report such omission to the three Vice Presidents, who shall then have 30 days to take whatever action they deem appropriate.

In the event that the Official who is the subject of the investigation is an ARASA or other agreement-covered employee, the Official who receives the recommendation for disciplinary action shall have only 10 days to accept or reject the recommendation from the Senior Director, Dispute Resolution Unit. If the recommendation is rejected, that Official shall provide written justification for the rejection to the Vice President Business Diversity, the Vice President Human Resources, and the Vice President Law. If the Official fails to act or to supply such written justification within 10 days, the Senior Director, Dispute Resolution Unit shall immediately report such omission to the three Vice Presidents, who will then have 15 days to take whatever action they deem appropriate. Any disciplinary action pursuant to such recommendation shall comply with the procedures for discipline of covered employees contained in ARASA's or other applicable collective bargaining agreement.

4. Hearing Process

a. Hearing Officer

Amtrak shall hire as employees or engage as contractors at least one full time (or two part time) hearing officer(s) whose priority shall be to hear and preside over disciplinary cases involving employees in Positions. If the hearing officer is not fully occupied by disciplinary cases involving employees in Positions, he or she may hear cases involving other unions. Amtrak shall pay the salary or contract fees of the hearing officer, who shall neither have worked for a railroad in a management position, nor have been an employee of a rail workers' union, for at least 3 years preceding appointment as hearing officer.

Amtrak shall decide whether the hearing officer position shall be filled by an employee or a contractor, and the terms and conditions of employment or service contract, respectively. Provided however, that under any arrangement with an employee or contract hearing officer, Amtrak shall retain the authority to remove the hearing officer for cause, including but not limited to racial bias in a hearing officer's determinations, as described more fully below. Class Counsel shall have input into formulating the job specifications and requirements for the hearing officer position prior to its posting or advertisement, and shall review the credentials and qualifications of and be consulted with respect to the candidates for the position. The hearing officer shall be evaluated annually as an employee or contractor by his or her supervisor. The BMWF shall have input into the hearing officer's performance appraisal with respect to diversity issues. Such input shall be in the form of written comments, which shall be submitted to the hearing officer's supervisor for consideration in the hearing officer's written evaluation.

The hearing officer may be removed by Amtrak or the Court at any time, pursuant to the procedure below, if Class Counsel is able to establish substantial evidence of racial bias against African Americans in the hearing officer's determinations, whether in evidentiary rulings or on the merits.

Class Counsel shall provide written notice to the VP Business Diversity, with a copy to Amtrak's counsel, that specifically sets forth the ways in which Class Counsel believes that the hearing officer has shown racial bias against African Americans in his or her determinations. Class Counsel, the VP Business Diversity, and Amtrak counsel shall meet within 10 days of receipt of Class Counsel's notice to discuss the allegations. If the Parties are

unable to resolve the issues raised by Class Counsel's notice within an additional 10 days, then Class Counsel may initiate an expedited enforcement proceeding by filing a written motion with the Court.

From the time of the receipt of Class Counsel's notice and while the motion is pending before the Court, Amtrak may assign cases previously assigned to the hearing officer to other Amtrak hearing officers.

Individual employees may make complaints against the hearing officer pursuant to Part IV D & E (EEO & Discipline) of this Decree. Hearing officers, like other Amtrak officials, may be subject to investigation and discipline pursuant to such provisions.

b. Applicable Standards

(1) Credibility Determinations

The hearing officer shall not consider the race, managerial, or union status of any witness in a disciplinary hearing in assessing credibility.

(2) Witnesses

Prior to the date of the disciplinary hearing, the hearing officer shall hold a conference, by telephone or in person, for the purposes of identifying Amtrak employees who are material witnesses for both Amtrak and the employee in a Position. This conference shall not preclude identification of additional material witnesses later, including at the hearing, where knowledge of such witness and/or their materiality was not reasonably available prior to the conference. Provided however, that all such material witnesses must be identified at least 5 days prior to the date of the scheduled hearing, unless they remain unknown at such time, and the hearing officer will determine whether any subsequently-identified witnesses are material. After the material witnesses are identified, the hearing officer shall

direct Amtrak to summon all material witnesses to the hearing at Amtrak's expense and to provide them with the requisite paid leave.

If at the hearing, the hearing officer determines that Amtrak has failed to summon a material witness, the hearing officer shall not close the hearing until such witness is summoned by Amtrak.

**(3) Evidence from Non-Employee Witnesses not Available
for Cross Examination**

If Amtrak introduces statements or letters from non-employee witnesses who are not available for cross-examination either in person or by telephone, and such evidence is uncorroborated, such evidence shall not be used as the sole basis for a finding of guilt.

(4) Defense

An African American employee in a Position may present at the hearing evidence that the alleged rules infraction at issue in the hearing occurred at least in part as a response to a racial slur that was made to, or about, him or her or because of other racial provocation or pattern of provocations. Such evidence, if deemed credible by the hearing officer, shall be considered by Official of the employee as a possible mitigating factor going to the severity or elimination of the discipline imposed, but shall not be admissible for purposes of determining guilt or innocence.

If such employee believes that the alleged rules infraction occurred at least in part as a response to a racial slur made to, or about him or her, or because of other racial provocation or pattern of provocations, such employee may file a complaint with Amtrak's Dispute Resolution Unit. The implementation of discipline shall be stayed pending investigation, except that Amtrak may suspend the employee according to the CBA or CA provisions pending the investigation if it determines that the circumstances warrant. If the Dispute Resolution Unit determines that its investigative record supports the employee's allegation, the Dispute Resolution Unit shall provide recommendations to the senior

manager or supervisor of the employee that is alleged to have made the racial slur or engaged in the racial provocation concerning appropriate discipline for such employee. The Dispute Resolution Unit shall also make a recommendation concerning mitigation of discipline of the charged employee in such instance. If the Official fails to implement such recommendation, the Senior Director, Dispute Resolution Unit shall notify the Vice Presidents of Business Diversity, Law, and Human Resources, who shall take whatever action they deem appropriate within 15 days from receiving a report from the Senior Director, Dispute Resolution Unit.

Any disciplinary action taken pursuant to investigation and resolution of an internal EEO complaint shall comply with the procedures for discipline contained in any governing collective bargaining agreement.

(5) Access to Decisions

Amtrak shall maintain in a centralized office and make available to Class Counsel, employees in Positions, and the BMWs, all written BMW decisions of any hearing officer presiding over BMW hearings.

5. Purging

Amtrak's current policy on purging records of adverse personnel actions shall continue as currently drafted, except that purging shall be automatic and shall not require a request on the part of the employee in a Position.

6. Training

As part of the EEO training required pursuant to this Decree, Amtrak shall provide training to the Officials regarding the disciplinary provisions set forth in Part D of this Decree.

7. Monitoring

Amtrak shall record all steps in the disciplinary process, and information concerning drug tests, including their results, in computer-readable format such that the Neutral Expert, and Amtrak and Class Counsel, can analyze the results and determine whether Statistically

Significant disparities exist in the treatment of, or impact of disciplinary procedures on, black employees in Positions. The Parties shall work with the Neutral Expert to identify the relevant information to be gathered and included in the database.

E. Equal Employment Opportunity

The reorganization of Amtrak's internal Dispute Resolution Unit, and Amtrak's internal EEO complaint procedures were approved by this Court in *McLaurin, et al. v. Amtrak*, C.A. 98CV2019. Most of the provisions set forth below overlap, and the remaining provisions are intended to supplement, those approved in *McLaurin*. The provisions approved in *McLaurin* and those set forth below shall be interpreted consistently.

1. Reorganization of the Amtrak Dispute Resolution Unit Function

Amtrak has reorganized the management of its equal employment opportunity ("EEO")

complaint function and advised Class Counsel of the changes that have been made. This Decree embodies the commitments relating to the maintenance of certain aspects of the new organizational structure.

Amtrak shall maintain a Director position, entitled Senior Director, Dispute Resolution Unit, or similar title (e.g. Director, Employee Resolution), which shall have responsibility for managing the internal EEO complaint procedure within Amtrak. Amtrak shall maintain a Director position, entitled Director, Diversity Monitoring or similar title, or an outside consultant, to monitor specific EEO functions and data identified in this Decree. If Amtrak decides to retain an outside consultant to be responsible for this monitoring position, the outside consultant shall be selected in accordance with the provisions in Part IVA(3) of this Decree. The Director, Diversity Monitoring, or the outside consultant (if one is selected) may also be given broader duties with respect to compliance with this Decree.

The Senior Director, Dispute Resolution Unit and the Director, Diversity Monitoring (or the monitoring consultant, if one is selected) shall report to the Vice President, titled Vice President, Business Diversity and Strategic Initiatives or similar title ("VP Business Diversity"), which shall have responsibility for Amtrak's EEO and diversity functions. The VP Business Diversity, the Senior Director, Dispute Resolution Unit, and Director, Diversity Monitoring shall have the power to develop and implement, on the approval of the President of Amtrak, recommendations with respect to EEO and diversity issues.

The Employee Services Unit within Amtrak no longer is responsible for receiving complaints from Amtrak employees. If that unit, or any other unit within Amtrak, is authorized to receive employees complaints in the future, within 6 months of the date that the unit begins to handle employee

complaints, Amtrak shall implement a protocol for referral of any complaint received by Employee Services or another similar unit, to the Dispute Resolution Unit, when the employee relations complaint presents potential discrimination issues. Responsibility for defending Amtrak against discrimination complaints or charges filed with federal, state, or local agencies (“external EEO complaints”) shall remain in the Amtrak Law Department. Investigators in the Law Department shall be responsible for conducting privileged investigations of external EEO complaints. Amtrak shall develop a protocol for the communication of information between the Dispute Resolution Unit and the Law Department, for purposes of: defining permissible communications; defining the scope of the attorney-client privilege or work product protection; and ensuring the independence of the Dispute Resolution Unit investigations.

Amtrak shall staff the Dispute Resolution Unit with a sufficient number of investigators to meet all time lines under this Decree relating to internal EEO functions.

Amtrak has consulted with Class Counsel to develop job specifications for the positions of Senior Director, Dispute Resolution Unit; Director, Diversity Monitoring; and Dispute Resolution Unit Investigator, in advance of posting such positions. Class Counsel shall thereafter be granted the opportunity to review the resumes and job applications of all minimally qualified applicants both for the Director and Investigator positions, provided that Class Counsel execute a confidentiality agreement limiting the use of such information to applicant selection or, if Class Counsel deems it necessary, to Consent Decree enforcement. Amtrak shall ensure that the Business Diversity and Strategic Initiatives office has a diverse work force. Partially to this end, Amtrak shall consider in good faith all applicants for employment as Investigators, including employees in Positions, who meet the minimum position qualifications, and Amtrak agrees to make Investigator job postings available to employees in Positions.

2. Internal Complaint Procedure

Amtrak has revised its internal EEO complaint procedure to provide for prompt investigation and resolution, where possible, of internal EEO complaints. Amtrak and Class Counsel shall agree on a policy statement of rights of employees to be distributed annually to all employees, which shall include a description of the internal complaint procedure. Amtrak shall implement procedures for the filing of internal EEO complaints in writing, in person, by e-mail, or by telephone.

Within 5 business days of Amtrak’s receipt of an internal EEO complaint, Amtrak shall provide the complainant with written confirmation of the filing of the complaint. Amtrak shall provide written

notice to complainants of applicable internal and external deadlines for filing and processing EEO complaints on three occasions: (1) with the written confirmation of the filing of the internal complaint; (2) on written notice of closure of its internal investigation; and (3) annually to all employees encompassed by this Consent Decree, irrespective of whether they have filed a complaint of discrimination. Amtrak also shall provide written notice of its non-retaliation policy to all EEO complainants. Such written notice shall contain the following language: "It is against Amtrak's policy and against Federal law for Amtrak to discriminate against any employee because he has opposed a practice made an unlawful employment practice pursuant to Title VII of the Civil Rights Act of 1964, as amended, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act."

With respect to EEO complainants who are also employees in Positions, Amtrak shall provide to such complainants written notice that they have the "right to have a BMW union representative present at all times when meeting with an Dispute Resolution Unit investigator in order to assist the complainant and to facilitate investigation." Such complainants shall be entitled to have a BMW union representative present with them at all times when they meet with an Investigator. The BMW representative shall be present to assist the complainant in gathering information and processing the complaint; provided, however, that Amtrak shall be given advance notice of BMW union presence or participation in the complainant's initial meeting with the Investigator as soon as practicable.

All complaints filed under the internal EEO complaint procedure or referred from the Employee Relations Department, shall be investigated and processed to closure within 90 days of the date that the internal complaint is filed. Investigators in the Dispute Resolution Unit shall attempt the early resolution of all complaints, within 30 days of the complaint being filed, through discussions with the affected employee and their department supervision.

Within 90 days of the complaint being filed, the complaint shall be closed. The closed complaint file shall include: (1) a record of facts that were developed by the investigation conducted by the internal Dispute Resolution Unit Investigator; (2) a summary of resolution efforts; and (3) any recommendations for resolution or further action. Recommendations for resolution may include recommendations for sanctions and discipline, up to and including termination, of employees for performance or conduct related to EEO issues. Such recommendations shall be made to those managers and supervisors who have the authority to impose such sanctions on the employees involved in the situation or circumstances that are the subject of the complaint. The Dispute Resolution Unit shall make no findings of a violation or non-violation. The Dispute Resolution Unit shall provide a written notice of the closure to the complainant, which shall include a summary of recommendations for action. The Dispute Resolution Unit shall maintain a confidential non-privileged written record of all investigations.

On closure, the complainant, Class Counsel and, if the complainant consents, BMW union representatives, may review a complete copy of the Dispute Resolution Unit Record, on the condition that they sign a confidentiality agreement that will preclude the use of the information for purposes other

than case processing of the employee's complaint, or for compliance with this Decree. Within 10 days of the notice of closure, an employee who is dissatisfied with the processing of a complaint may request a review by the Senior Director, Dispute Resolution Unit. Upon request by the complaining party, the Senior Director, Dispute Resolution Unit shall conduct a review of the employee's complaint and meet with the complainant. Such meeting shall be in person, or by telephone if mutually agreed to by the complaining party and the Senior Director, Dispute Resolution. The Senior Director, Dispute Resolution Unit shall conduct the meeting and review, and make any recommendations for resolution or further action within 60 days of the date of closure of the claim by internal Dispute Resolution Unit Investigator.

An Official who receives a recommendation from the Dispute Resolution Unit for discipline of a subordinate manager, supervisor, or employee as a result of an internal EEO investigation shall have 10 days to accept or reject the recommendation. If the recommendation is rejected, the senior manager or supervisor shall provide his/her reasons for rejecting the recommendation in writing to the Vice President, Business Diversity; the Vice President of Human Resources; and the Vice President and General Counsel. If the senior manager or supervisor fails to act within the 10-day period, the Senior Director, Dispute Resolution Unit will so report to the three Vice Presidents referenced above. The three Vice Presidents shall have 15 days from the date they receive a Senior Official's written notice of rejection of a recommendation, or where the Senior Official has not taken any action, 15 days from receiving a report from the Senior Director, Dispute Resolution Unit, to take whatever action they deem appropriate. Any disciplinary action taken pursuant to investigation and resolution of an internal EEO complaint shall comply with the procedures for discipline contained in any governing collective bargaining agreement.

3. Monitoring of Internal Complaint Procedure

At the close of each investigation, the Dispute Resolution Unit shall provide each complainant with an evaluation form to determine the complainant's level of satisfaction with the processes and performance of the Dispute Resolution Unit. Amtrak shall consult with Class Counsel in developing the evaluation form, and Class Counsel shall have access to completed evaluation forms for monitoring purposes. The completed forms shall be reviewed and tabulated periodically for the purposes of (1) evaluating semi-annually the performance of the EEO Office as a whole and (2) evaluating annually the performance of individual investigators vis-à-vis promotion and pay.

4. Processes Specific to MBTA Complaints

Although Amtrak has an office or position separate from or outside the above-referenced Dispute Resolution Unit which is charged with responsibility for investigating internal discrimination complaints lodged by Amtrak Position covered employees in MBTA service who operate the commuter rail service in the greater Boston area, Amtrak employees in Positions in MBTA service shall

have the right to elect to have their internal complaints investigated by the Dispute Resolution Unit. Any such BMW member who does elect to have his internal complaint investigated by the Dispute Resolution Unit shall be afforded all rights under this Decree with respect to Amtrak's investigation and treatment of his or her internal complaint.

5. Pattern & Practice Investigations

The Dispute Resolution Unit shall have the authority and the responsibility to investigate patterns and practices of conduct by individuals or departments based on complaints or other information that comes to the attention of the Dispute Resolution Unit. An employee's involvement in three or more separate incidents, including incidents occurring prior to the Injunctive Effective Date, that result in non-frivolous EEO complaints within any two-year period, regardless whether the employee was alleged to be the principal wrongdoer in any complaint, shall be grounds for initiating an investigation.

The BMW shall have the authority to file pattern and practice EEO complaints, which shall be subject to all deadlines applicable to the investigation and processing of individual complaints. The BMW also shall have the authority to lodge informal individual EEO complaints. Amtrak agrees to designate a union liaison within the Dispute Resolution Unit to accept such informal individual EEO complaints lodged by the BMW, and to investigate such complaints, but such BMW-lodged individual complaints shall not be considered formal complaints subject to the above-outlined deadlines.

Amtrak shall maintain a database for monitoring BMW complaints and Amtrak's investigations thereof.

Every three years the Dispute Resolution Unit shall conduct an audit of the Engineering department within Amtrak NEC based on the history of EEO complaints from employees in that department, and other EEO-related information. The Dispute Resolution Unit shall have the discretion to retain outside consultants to conduct such audits. If this discretion is not exercised, and the Dispute Resolution Unit determines not to retain outside consultants to conduct the audit, the Vice President, Business Diversity, shall consult with Class Counsel regarding audit methodology. The Dispute Resolution Unit shall report the results of the audit to the manager responsible for the Engineering

department. Further, pursuant to the power of the Vice-President, the Office of Business Diversity may make recommendations and/or implement changes in the department on approval of Amtrak's President with respect to EEO and diversity issues.

6. Training

NEC Officials shall be trained on EEO issues within one year after the Injunctive Effective Date. Any EEO training that is conducted under the auspices of Amtrak's new Dispute Resolution Unit prior to the Injunctive Effective Date shall be counted towards the training that is required pursuant to the provisions of this Part of the Decree. Such Officials shall be given a refresher training course at least once every 3 years. Subjects for the training course shall include applicable EEO laws, Amtrak's internal and external EEO complaint procedures, and Decree obligations. Amtrak agrees to consult with Class Counsel regarding the curriculum of the training program and the selection of the training vendor.

V. INCORPORATION OF INJUNCTIVE PROVISIONS INTO CBA

A. Preamble

The Parties have been unable to agree to what extent any provisions of this Consent Decree should be incorporated into the CBA and CA. In an effort to settle this case, after having resolved all other issues, except the issue of what provisions if any should be incorporated into the CBA and CA, the Parties have agreed to defer this issue until the third year of this Decree. The Parties believe that agreement at that time may be easier to reach after the Parties have had sufficient time to determine the effectiveness of the terms agreed to herein. The procedure and standard for inclusion of Consent Decree terms, if any, into the CBA and CA shall be as set forth below.

B. Identification of Positions

Thirty-three months following the Injunctive Effective Date, Plaintiffs shall provide to Amtrak proposed provisions from the Consent Decree to be incorporated into the CBA and CA, and shall identify any modifications to the CBA and CA necessary to accommodate those changes.

Within one month after receipt of Plaintiffs' first proposal (34 months following the Injunctive Effective Date), Amtrak shall notify Class Counsel as to which provisions it agrees to incorporate as proposed, which it agrees to incorporate with modifications, and to which it objects in the entirety. For those provisions to which it suggests modifications or objects, Amtrak shall provide a brief explanation of its position.

C. Negotiation

Within one week of Amtrak's notification to class counsel as provided in Part B above, the Parties and/or their counsel shall meet to discuss the ground rules for negotiation regarding the disputed provisions and the possibility of mediation. For a period of 4 months following the identification of positions in part B above (through 38 months after the Injunctive Effective Date), the Parties shall attempt to negotiate an agreement over the disputed provisions. If they concur, they may rely on the assistance of a mediator.

If the Parties are able to reach agreement through negotiation, they shall enter into an appropriate memorandum of understanding, obtain ratification of the provisions, if necessary, and notify the Court that agreement has been reached.

If the Parties are unable to reach agreement through negotiation, Plaintiffs shall memorialize their final position on the issue of incorporation of Consent Decree provisions into the CBA and CA and serve a copy of such document on Amtrak within 15 days after the conclusion of the negotiation period (38 months and 15 days after the Injunctive Effective Date). Amtrak shall memorialize its final position on the issue and serve a copy of such document on Plaintiffs within 10 days after receipt of Plaintiffs' memorialization (38 months and 25 days after the Injunctive Effective Date).

D. Judicial Determination on Incorporation

1. Standard for Incorporation

The ultimate question to be decided by the Court if the Parties are unable to resolve the incorporation issue will be whether the incorporation of certain provisions of the Consent Decree, if any, into the CBA and CA will further the purposes of the Consent Decree to improve equal opportunities for class members. In deciding this ultimate question the Court shall consider any admissible evidence that the Parties present at the evidentiary hearing described below concerning the cost to Amtrak to incorporate such provisions into the CBA and CA and to continue application of such provisions after the term of the Consent Decree, the experience of Amtrak and the Plaintiffs and Class Members in applying the provisions during the term of the Consent Decree and prior to the Consent Decree, the results obtained by the provisions, the workability of the provisions, the interests of all Parties, and the public interest. In making its decision the Court shall consider for possible inclusion in the CBA and CA only those provisions that were identified by either party in their

memorializations of their final positions as describe in Part C above.

2. Process

Within 30 days after the conclusion of the negotiation period described above (39 months after the Injunctive Effective Date), Plaintiffs shall notify the Court of the failure to reach complete agreement, identify the provisions in dispute, and attach each party's memorialization of its final position on incorporation.

Within 30 days thereafter (40 months after the Injunctive Effective Date), each party shall identify all persons who it intends to call as witnesses at an evidentiary hearing, including any experts, and provide the other side with copies of any documentary information or evidence that the party intends to rely on at the evidentiary hearing. Without leave of Court for good cause shown, neither party may call as a witness any person not identified at this initial exchange, except for witnesses who will testify solely as to actions that occurred or costs incurred after the initial exchange ("supplemental witnesses"). Each party must notify the other promptly after it becomes aware of supplemental witnesses. Neither party may use documentary evidence other than that so provided, except for evidence concerning actions that occurred or costs incurred after such exchange of information ("supplemental documents"). Each party shall provide such supplemental documents to the other party as they become available. Plaintiffs may request supplemental documents concerning costs not later than 41 months after the Injunctive Effective Date, and Amtrak will produce such documents as they become available.

During the next 90 days (through 43 months after the Injunctive Effective Date) each party may conduct not more than a 4-hour deposition of each other's witnesses. Amtrak will pay any employee witnesses for Plaintiffs for their time in the deposition and at the hearing.

Except as set forth above, the Federal Rules will govern all discovery. Any discovery dispute(s) shall be submitted to the Court for resolution if the Parties are unable, following a good faith attempt at agreement, to resolve their difference. If the dispute results in significant delay of the negotiation or discovery process, on motion by either party, the Court shall have the discretion to enlarge the allotted discovery period.

The evidentiary hearing shall occur as soon as possible after the conclusion of the discovery period. Unless another time frame is agreed to by the Parties or set by the Court, each party will have two days to present its case-in-chief. The Court, at a pretrial conference, will establish all deadlines for briefing and trial motions.

The Court shall issue an order directing which provisions, if any, shall be incorporated into the CBA and CA, and directing the Parties to execute a memorandum of understanding consistent with the Court's order. Once the memorandum of understanding is agreed to, the Court's order shall be treated as the conclusive award under Part 159 of the Railway Labor Act; if the Parties cannot agree, either party may seek relief from the Court. Provisions of the CBA and CA that are adopted pursuant to this process shall be subject to change pursuant to the provisions of the Railway Labor Act.

E. Attorney Fees and Expenses

Amtrak shall pay the reasonable fees and expenses, including fees and costs of experts and consultants retained in the process, of Class Counsel as a prevailing party as a result of its work pursuant to this Part V of the Consent Decree, subject to the following caps and pursuant to the following procedures.

The payment to Class Counsel shall not exceed \$100,000, unless the fees and expenses of Amtrak's inside and outside counsel for work pursuant to this Part V exceed \$100,000. If the fees and expenses of Amtrak's inside and outside counsel exceed \$100,000, then the payment to Class Counsel shall not exceed the fees and expenses of Amtrak's inside and outside counsel for work pursuant to this Part V.

For purposes of these caps, Amtrak shall include all hours worked by lawyers and staff of outside and inside counsel (inside counsel shall be limited to Amtrak's legal department), except for persons properly excluded as performing overhead functions. The fees of Amtrak's outside counsel shall be based on their normal rates. If Amtrak does not have normal rates for lawyers in its legal department, the Laffey matrix shall be used to determine those rates. If Amtrak does not have normal rates for staff in its legal department, rates similar to comparable staff working for its outside counsel will be used.

To enable each party to know how such fees and expenses are accruing, the Parties shall exchange, by the 15th day of each month, the total amount of fees and expenses incurred during the

previous month and to date for work pursuant to this Part V. The information exchanged shall not include detail concerning the purpose of the work performed or costs expended.

At the end of the process described herein Class Counsel shall submit its bill for fees and expenses to Amtrak for payment in the form of a petition for attorneys fees and expenses, which may be filed in modified form with the Court in the event the Parties disagree as to the payment to be made to Class Counsel for its fees and expenses. Amtrak retains the right to review the bills for reasonableness, and to contest or dispute any fees or expenses it deems unreasonable using statutory and case law applicable to employment discrimination cases existing at the time of such billing as the appropriate controlling authority. If the Parties cannot resolve the amount of fees and costs to be paid to Class Counsel, the Court shall also apply the statutory and case law applicable to employment discrimination cases existing at the time of such billing as the appropriate controlling authority.

The Parties shall retain full and complete records, which shall be promptly produced to the opposing party at the conclusion of the process described herein, of all billings, time and expenses incurred in their work on this Part V of the Consent Decree, including time by quarter hour increments for all attorneys and staff and a description of the particular tasks carried out by each by date over the period covered by the billing at issue. Limited discovery on time and expense issues shall be allowed to the extent necessary for the Court to make any determination required herein.

F. Extension of Term of the Consent Decree

The process described in this Part V is designed to be completed during the term of the Consent Decree. However, if for any reason it is not completed during that term, the Court shall retain jurisdiction until the process is completed. If requested by either party, the Court shall determine the extent, if any, to which the provisions of the Consent Decree in dispute will continue pending resolution of the process.

VI. SETTLEMENT FUND

A. Creation and Administration of Fund

1. Creation and Purpose

For the purpose of satisfying and settling all of the Eligible Claims of all named Plaintiffs, Class Members, and Class Counsel, as those are defined in Part III of the Decree, Amtrak shall deposit into the Settlement Fund (the "Fund"): (1) the sum of Five Million Dollars (\$5,000,000), on or before 30 days following the Final Approval by the Court of this Decree; (2) the sum of Five Million Dollars (\$5,000,000), plus six percent (6%) interest compounded monthly from the date of the first payment until the date of deposit, on or before October 15, 2000; (3) the sum of Three Million Dollars (\$3,000,000), plus six percent interest compounded monthly from the date of the first payment until the date of deposit, on or before September 1, 2002; and (4) the sum of Three Million Dollars (\$3,000,000), plus six percent (6%) interest compounded monthly from the date of the first payment until the date of deposit, on or before October 15, 2002. The Fund shall be established as a qualified Settlement Fund under Part 468B of the Internal Revenue Code and shall be administered by Michael

Lieder and Lawrence Schaefer (“the Administrators”) under the Court’s supervision in accordance with Administrative Order No. 1, a proposed form of which shall be submitted prior to the hearing on final approval of the Decree.

The four above deposits are the sole payments that Amtrak shall be required to make to settle this case and the foregoing Claims, except with respect to: (1) published notice (Part VIII C); (2) consulting fees requisite to implementation of the Decree including for the Neutral Expert; (3) fees for mediators and/or arbitrators relating to Job Relief Process (Part VII A) and enforcement matters (Part XI); (4) fees related to the issue of incorporation provisions of the Consent Decree into the CBA (Part V) and (5) employer taxes as provided in Administrative Order No. 1. Nothing in the foregoing sentence, however, shall release Amtrak from expending the necessary resources to implement internally the injunctive measures mandated by Part IV of the Decree. From the deposits and any income earned thereon, Plaintiffs and Class Members may receive payments, and Class Counsel and all other non-Class Member payees shall be paid all fees and reimbursed for expenses incurred, except as set forth immediately above. Tax reserves and an appeal Fund shall be created and set aside before allocating the Fund among eligible Claimants or Payees, all in accordance with Administrative Order No. 1, the terms of which shall be incorporated herein and made a part of this Decree.

The Portion of the Fund designated to pay the Claims of the Plaintiffs and Class Members shall consist of Ten Million Dollars (\$10,000,000) and any income thereon and shall be known as the “Claims Fund.” The Portion of the Fund designated to pay to and reimburse Class Counsel and all

other non-Class Member Payees their reasonable fees, expenses and costs, shall be known as the “Monitoring Fund.” The Monitoring Fund shall consist of Six Million Dollars (\$6,000,000) and any income thereon. Such income as to both Portions shall include both the interest payable by Amtrak as provided above and the income earned by the Fund pending distribution from the Fund. Both Portions shall be governed by Administrative Order No. 1. The Administrators shall invest both Portions of the Fund in interest-bearing United States Treasury securities, securities of agencies of the United States backed by the full faith and credit of the United States, and/or Repurchase Agreements, pending distribution from the Fund.

Except as provided in Part V concerning incorporation into the CBA, the Monitoring Fund shall cover fees, costs, and expenses, whether previously incurred in connection with this litigation or to be incurred at any time including, but not limited to, those relating to: (1) the administration of the Claims Resolution Process and the Claims Fund, including distribution of the Claims Fund to Plaintiffs and Class Members and related matters; (2) administration of the Monitoring Fund and distributions to Payees; (3) Plaintiffs’ half of all past fees, costs and expenses of ADR Associates incurred during the mediation of this dispute; (4) all attorneys’ fees, costs and expenses incurred or to be incurred by Class Counsel for any purpose in connection with the case, including, but not limited to, those relating to (a) finalization of the Decree, (b) obtaining approval of the Decree by the Court and in any related appeal proceedings or defense of the Decree, (c) monitoring of implementation of the Decree, (d) resolution of unresolved Decree issues, including Class Members’ Job Relief, by the Parties, the Court, an arbitrator

or otherwise, and (e) enforcement of the Decree. Notwithstanding the above, attorneys' fees, costs and expenses incurred by any person objecting to, or making a collateral or direct attack on the Decree or on the actions of the Administrators of the Fund, shall be borne by that person and shall not be chargeable to either Amtrak or the Fund.

The Fund, including both of its subparts, shall irrevocably vest in the Court, through its agents the Administrators, as defined in Administrative Order No. 1 on the Non-Injunctive Effective Date. If, by whatever means, the Decree does not become a final judgment, the entire Fund and any interest thereon shall revert to Amtrak.

2. Administrators= Administrative Responsibilities

In administering the Fund, the Administrators shall be bound by the terms of the Court's Administrative Order No. 1, as that order may in the future be supplemented or amended by the Court to administer and carry out the purposes of the Decree, provided that no such supplementation or amendment shall alter the terms of the Decree, including Amtrak's payment obligations.

B. Claims Filing Procedures for Settlement of Claims of Plaintiffs and Class Members

Following preliminary approval of the Decree, Class Counsel was obligated to mail a Claim Form to every known Class Member at his/her last known address, if available. Class Counsel also has been obligated to make Claim Forms available to other Class Members at their request.

The signed Claim Forms submitted in accordance with the procedures set forth on the Claim Form to the Administrators by Class Members as defined in the Decree, Part III.A & D, and, including named Plaintiffs, and postmarked or hand delivered by June 23, 2000 shall be processed and reviewed by the Administrators. The Administrators shall recommend monetary awards from the Fund to the Court under seal, with a copy to outside counsel for Amtrak. Underlying Claim Forms prepared by Class Members may be provided to Amtrak only if so ordered by the Court, or by consent of Class Counsel, to Amtrak's outside counsel.

In order to promote both fairness and efficiency, each Claim will be awarded points after review and after such verification as the Administrators deem appropriate of the information provided on the Claim Form. Verification may include, among other things, checking the relevant information on computerized databases maintained by the Administrators and Claimants' tax returns and on the records of the BMW. The details of the point system to be applied shall be provided to Amtrak, and are subject to Court approval on recommendation by Class Counsel after Claims are received. The point system shall be applied uniformly, will not be discretionary after approval and may be amended only by Court Order. The total points awarded to all Claimants will be aggregated, and each Claimant's proportionate share of the total points will be determined. The Claimant shall then be allocated a commensurate proportion of the Claims Fund. Subject to Court approval, a Claimant may be required to obtain a minimum number of points to qualify for a monetary award. All monetary awards shall be subject to the review and approval of the Court before disbursement. All Class

Members receiving awards will be required to keep the amount of the awards confidential from everyone except Class Counsel, or any attorney, tax or financial advisor representing them or members of their immediate family.

Points will be awarded to Plaintiffs and Class Members who qualify as employees in Positions, based on such factors as: (1) length of employment with Amtrak; (2) strength of claim and amount of damages from alleged denial of advancement opportunities; (3) strength of claim and amount of damages from alleged compensation discrimination; (4) strength of claim and amount of damages from disparate discipline; (5) strength of claim and amount of damages from alleged racial conduct or language (hostile environment); and (6) contribution to the prosecution of the litigation. Points will be awarded to Plaintiffs and Class Members who applied for Positions, based on such factors as: (1) type of job sought; (2) demonstrated suitability and/or qualification for the job sought; (3) strength of claim; and, (4) contribution to prosecution of the litigation.

Awards shall be made from the Claims Portion of each installment paid by Amtrak to the Fund. The awards made to Plaintiffs and Class members from the first and second installment shall be deemed 26% compensatory, 52% backpay, and 22% pre-judgment interest. The awards made to Plaintiffs and the Class Members from the third and fourth installment shall be deemed 22% compensatory, 43% backpay, and 35% pre-judgment interest. No award paid to any Plaintiff or Class Member pursuant to the Decree shall be taken into account in determining the amount of or eligibility for any pension, retirement, or other benefits from Amtrak.

However, any Class Member who released any of his/her Claims that would otherwise be covered by this Decree, or obtained a final judicial determination of any of his/her Claims that would otherwise be covered by this Decree, is not eligible to receive an award from the Fund for those Claims under these procedures.

VII. JOB RELIEF

Plaintiffs and Class Members are entitled to assert claims for Job Relief under two circumstances, defined below, and shall be awarded such relief as the Parties may agree. If the Parties are unable to agree on resolution of such claims, however, the Plaintiffs or Class Members shall resolve their claims for Job Relief in accordance with the procedures outlined in this Part. The Job Relief Process is interrelated with the monetary awards procedure set forth in Part VI B of this Decree in that participants in the Job Relief Process may receive reduced monetary awards according to the percentages outlined herein. A negative arbitration ruling on a participant's Job Relief Claim shall not, however, preclude or impact on that person's right to accumulate points for monetary relief stemming from other types of claims or incidents under the Claims Resolution Process in Part VI B of this Decree.

A. Assertion of Claims by Terminated Class Members for Job Relief

1. Limitations on Individual Participation

Class members whose claims involve demonstrable discrimination in terminations that occurred on or after January 1, 1995 and prior to May 5, 2000, are eligible to participate in the Job Relief

Process; except that class members who were terminated because of a positive drug test (as distinguished from those who refused to submit to a test) or for actual physical violence (and not for an alleged threat or uncorroborated accusation of violence), are ineligible to participate in the Job Relief process. Claimants whose employment was terminated while on probation are eligible, although their rights are governed by Paragraph 3 below.

2. Consultation Period and Voidability of Settlement

Class Counsel shall have forty-five (45) days following the deadline for filing Claim and Job Relief Election Forms (the “Claims Consultation Period”) to evaluate the Job Relief Claims and, consistent with their attorney-client obligations, counsel persons filing Job Relief Election Forms concerning the eligibility and strength of their Job Relief and monetary claims, and the desirability of pursuing Job Relief.

Within 10 days after the Claims Consultation Period, Class Counsel shall notify Amtrak of the number of Class Members who have chosen to participate in the Job Relief Process. If more than 50 Class Members have elected to participate in the Job Relief Process for terminated employees (exclusive of Test-taker Claimants), Amtrak may, within fifteen days of receiving such notice, withdraw from this Decree and declare the Settlement null and void.

3. Reduction in Monetary Relief

Job Relief Claimants who participate in the process for terminated employees shall have deducted from their monetary claim, if any, all points allocated to the claim for which Job Relief is

sought, plus fifty percent (50%) of all points allocated for other claims under the procedure set forth in Administrative Order No. 1. Probationary employees who elect Job Relief will not be entitled to any points for claims of discrimination. No points, however, shall be deducted from that Claimant's contribution points, if any, regardless whether the Claimant was probationary.

4 Procedures

a. Identification of Claimants and initial exchange of evidence

Within ten (10) days after the Consultation Period, Class Counsel shall notify Amtrak of all "terminated employees" seeking Job Relief and the nature of their claims. Promptly thereafter, but in any case no later than thirty (30) days following such notification, the Parties shall exchange all documentation relating to the Claimant's termination not already in the possession of the other Party. Documents to be exchanged include, but are not limited to, Amtrak's personnel and disciplinary records on the Claimant, as well as any official Hearing and/or Arbitration transcript.

b. Negotiation

Following identification of the Job Relief Claimants, Class Counsel and counsel for Amtrak shall consult to determine which Job Relief Claims are able to be resolved through negotiation. Amtrak and Class Counsel shall attempt negotiation of each such claim.

c. Mediation

If unsupervised negotiation of a Job Relief Claim does not succeed within sixty (60) days after the expiration of the Claims Consultation Period, or is deemed unlikely to succeed by either Party at

any time following thirty (30) days after the expiration of the Claims Consultation Period, the Claim shall proceed to mediation. Amtrak shall pay all reasonable fees and costs of the mediator, which shall be ADR Associates or, in the event of unavailability, a mutually selected substitute. Each side shall pay its own fees and costs, with the fees and costs of Class Counsel paid from the Monitoring Fund.

d. Arbitration

If one of the Parties determines after one or more mediation sessions, or if the mediator concludes at any time, that the Job Relief Claim will not be resolved by mediation, the Job Relief Claim shall proceed to arbitration. Amtrak shall pay all reasonable fees and costs of the arbitrator, which shall be a principal of ADR Associates who did not conduct any of the mediation sessions, or in the event of unavailability, a mutually selected substitute. Each side shall pay its own fees and costs, with the fees and costs of Class Counsel paid from the Monitoring Fund.

1) Hearings

An arbitration hearing on each such claim shall be set for an agreed date no later than one hundred eighty (180) days after the expiration of the Claims Consultation Period. The location of the hearing shall be by agreement of counsel. If no agreement is reached, the location shall be determined by the arbitrator, who shall consider the location of documents, witnesses, and other factors concerning relative convenience to the Parties. Each side shall be entitled to present testimony and other evidence and argument for a maximum of four (4) hours per side. The arbitrator may grant additional time at his or her discretion, particularly when a Party's time has been consumed inordinately by objections, legal argument or uncooperative adverse witnesses. Following the hearing, the arbitrator shall render a written decision stating the result reached. Copies of the decision shall be sent to the Parties.

2) Evidence

The Federal Rules of Evidence shall control in determining admissibility of evidence at the hearing, except as set forth below. Requirements for establishing foundation and authenticity of

documentary evidence, and hearsay objections to documentary evidence (except not double hearsay objections), are waived, although such issues may be considered by the arbitrator in determining the weight of the evidence. Written and notarized statements from persons who are not currently Amtrak employees, and prior deposition testimony from persons who are not currently Amtrak employees, may be admitted into evidence for any purpose at the discretion of the arbitrator and giving weight to the fact that the individual is not available for cross-examination. Oral testimony shall be under oath. The arbitrator may request either Party to submit additional written or documentary information that the arbitrator considers necessary to reach a correct result. Although not anticipated to be the norm, the arbitrator may request written briefs or memoranda prior to the hearing, following the hearing, and/or with respect to any issues raised during the hearing.

There shall be no depositions taken in connection with these arbitration proceedings. However, no later than thirty (30) days before the hearing, if either Party believes that the discovery of information, in addition to the initial exchange, is necessary, the Parties may by letter request from each other the production of specific, clearly defined relevant documents or information. Responsive documents or information shall be supplied within fifteen (15) days of receiving the request. At least ten (10) days prior to the hearing, counsel shall exchange the documents that they plan to use as exhibits at the hearing. No document may be used in any fashion in the arbitration if it has not been supplied to the other Party. No witness may be called at the hearing unless his/her name has been supplied to the other Party at least five (5) working days prior to the hearing. If a witness is currently an Amtrak employee,

Amtrak shall make him or her available to testify at the hearing at no cost to the Job Relief Claimant. In the event the Parties are unable to resolve any disputes about the production of documents or information, they shall jointly confer with the arbitrator by telephone or in person to seek a resolution. In resolving any such disputes, the arbitrator's determination shall be guided by the principle of providing both Parties with a fair opportunity to present their respective positions and to respond to the other's presentation.

3) Standards for decisions

The Job Relief Claimant shall prevail at the hearing and be entitled to Job Relief if he or she establishes either: (1) that white (or non-black) employees in BMW positions were treated more favorably than the terminated Claimant for similar rules violations that the non-black employee committed any time after January 1, 1995 and before May 5, 2000; or (2) direct evidence of racism by a supervisor or manager involved in the decision-making chain for the Claimant's termination.

4) Definition of Job Relief

For purposes of the arbitration hearing, "Job Relief" means reinstatement with retroactive seniority on all rosters. Prior to the arbitration, however, the Parties may negotiate whatever relief they deem appropriate.

B. Assertion of Claims by “Test-takers” for Job Relief

1. Limitations on Individual Participation

In order to participate in this Job Relief Process, a Claimant must demonstrate that between January 1, 1995 and May 5, 2000: 1) the Claimant sought qualification testing; 2) the Claimant was denied the opportunity to take such qualifications test; 3) the Claimant needed the qualification certification to qualify for a job opening; 4) the job opening was given to a white employee qualified after the date on which the Claimant sought qualification; and 5) the Claimant ultimately was granted the opportunity to qualify and passed the qualification test.

2. Consultation Period

The same consultation period described in Part A(2) above shall apply; however, there shall be no cap on the number of qualified claimants entitled to participate in the Job Relief Process for “test-takers” set forth under this Part B.

3. Reduction of Monetary Relief

Test-taker Claimants shall have deducted from their monetary claim, if any, all points allocated to the Claim for which Job Relief is sought, plus twenty-five (25) percent of all points allocated for other claims under the procedure set forth in Administrative Order No. 1. No points, however, shall be deducted from that Claimant’s contribution points, if any.

4. Procedures

The BMWE shall convene a panel, which shall consult with Class Counsel, to review all Job

Relief Claims submitted under this provision to determine if “test-taker” claimants satisfy the criteria set forth in Part B(1) above. All Claimants who are able to satisfy the above criteria shall be entitled to Job Relief. Amtrak shall defer to the BMW’s decision regarding the grant or denial of Job Relief Claims for “test-takers”.

5. Definition of Job Relief

“Job Relief” as the term is used in this part means retroactive seniority on the appropriate seniority roster.

VIII. NOTICE

Prior to final approval of this Decree, and pursuant to Court Order, Class Counsel has provided mailed and published notice of the Settlement, the fairness hearing, and other matters. The costs of Published Notice shall be borne by Amtrak. The cost of postage for an distribution of Mailed Notice and the Forms shall be borne by the Settlement Fund, though Amtrak shall bear all costs relating to preparation of address lists.

IX. RECORDKEEPING AND REPORTS

A. PERIODIC REPORTS

Amtrak shall provide semiannual reports, unless another period is specified below, to Class Counsel on each of the following subjects (to the extent they occurred during the period in question.) The semiannual reports shall cover a six-month period (January 1 – June 30 and July 1 – December 31). Reports shall be provided within one month of the close of the period covered. The subjects to

be covered are as follows:

1. Counts of the number of employees in Positions for the NEC as a whole, for Amtrak's operations under contract to the MBTA, and for each division (e.g., Track, Bridges & Buildings, Election Traction) within the Engineering Department, with subcounts for African Americans;
2. Counts of the number of new hires into Positions for the NEC as a whole, for Amtrak's operations under contract to the MBTA, and for each division, with subcounts for African Americans;
3. The results of statistical analyses of interviews and placements required under Part IV.B.1 & 3;
4. The results of statistical analyses of qualifications test access and results required under Part IV.C.4;
5. The results of statistical analyses of training access and provision required under Part IV.C.5;
6. The results of statistical analyses of disciplinary treatment required under Part IV.D.7;
7. Computerized or written records of race discrimination complaints by African Americans in Positions to the EEO Resolution Unit, as provided in Part IV.E, including but not limited to, to the extent maintained in a database, the date of the complaint, the person allegedly engaging in the discriminatory activity, the EEO manager to whom the

complaint was referred, whether the complaint was resolved through the early resolution process, the date of such early resolution, any recommendations for sanctions or discipline as a result, and the date of such recommendations and report;

8. Computerized or written records of all investigations of patterns or practices of racially discriminatory conduct against African Americans in Positions by individual Officials, including, to the extent maintained in a database, the date any such investigation was launched, the name of the person investigated, the person performing the investigation, whether the investigation resulted in any recommendations for sanctions or discipline, and the date of such recommendation;
9. Computerized or written records relating to the tri-annual analyses of the Engineering Department and its respective Divisions (e.g., Bridges & Buildings, Electric Traction) required under Part IV.E.5; and
10. A log of all training courses given to EEO Resolution Unit investigators or Officials that have as a subject EEO issues, including all persons in attendance, as provided in Part VI.E.6.

K. COPIES OF CERTAIN ITEMS TO BE PROVIDED BY AMTRAK AND NEUTRAL EXPERT

Amtrak will provide Class Counsel with copies of the following items required by or related to the Consent Decree, at least two weeks prior to their implementation unless otherwise indicated. In the event Amtrak consults with the Neutral Expert in formulating such document, analysis or

methodology, pursuant to the provisions of this Decree, Amtrak or the Neutral Expert shall provide copies of the following items to Class Counsel as soon as developed (contemporaneous with provision by the Neutral Expert to Amtrak), and in no circumstance later than two weeks prior to their implementation. The provision of such items prior to their implementation does not give Class Counsel any power to do more than make recommendations to Amtrak, unless otherwise provided elsewhere in this Decree:

1. A description of the data to be entered and methodology to be used to determine whether there are Statistically Significant disparities in interviews, hiring and placements pursuant to Part IV.B.1&3;
2. A description of the data to be entered and methodology to be used to determine whether there are Statistically Significant disparities in test access and results required under Part IV.C.4;
3. A description of the data to be entered and methodology to be used to determine if there are Statistically Significant disparities in training access and provision as required under Part IV.C.5;
4. A description of the data to be entered and methodology to be used to determine if there are Statistically Significant disparities in disciplinary treatment required under Part IV.D.7;
5. The application form to be developed for external applicants pursuant to Part IV.B. 1;

6. The standardized interview, screening and selection procedures to be developed pursuant to Part IV.B.1 and any revisions to such procedures;
7. The standardized qualifications for each classification and any variations among Positions within each classification to be prepared pursuant to Part IV.C.1;
8. The job description and qualifications for the equipment instructors, under the conditions set forth in Part IV.C.2;
9. The standardized forms for practical tests and written tests under the conditions set forth in Part IV.C.2.b-d;
10. Records of and relating to validation of any written tests used by Amtrak under the conditions set forth in Part IV.C.2;
11. The standardized form for evaluating the performance of the EEO Office and individual EEO Investigators pursuant to Part IV.E.3-5;
12. The job specifications and requirements for the hearing officer position, and resumes and applications of all candidates for the position under the conditions set forth in Part IV.D.4;
13. Any recommendations of the VP Business Diversity with respect to EEO and diversity issues that have been approved by the President of Amtrak as provided in Part IV.D. or E, within seven days of such approval; and
14. The forms, and related records, on which complainants can indicate their level of

satisfaction with the performance of the EEO Office and individual investigators pursuant to Part IV.E.

C. ACCESS TO RECORDS

Amtrak will provide Class Counsel access for sufficient time to inspect the following records on twenty days written notice to Amtrak's counsel; provided, however, that Amtrak may require Class Counsel to specify the particular Positions or persons for which Class Counsel seeks information if the documents responsive to any request are sufficiently voluminous to make the provision of access unduly burdensome:

1. Completed applications for Positions as provided for in Part IV.B;
2. Completed interview assessment forms of candidates, as provided in Part IV.B;
3. Position postings, as provided for in Part IV.C.1;
4. Records relating to any complaint appealing a Position posting under the conditions set forth in Part IV.C.1;
5. The list of qualified examiners enumerating the tests each is qualified to give, their phone numbers and addresses pursuant to Part IV.C.2;
6. Printouts of requests for qualifications testing, or retesting pursuant to Part IV.C.2;
7. Records concerning any employee who has been denied a retest owing to his failure of three or more tests in the past two years, under the conditions set forth in Part IV.C.2;
8. Records concerning retests that result in the displacement of a black employee by a

- retested white employee under the conditions set forth in Part IV.C.2;
9. Printouts of training requests and training provided, as provided in Part IV.C.5;
 10. Records relating to invocation of the exception for postponement of training opportunities under Part IV.C.5;
 11. Records relating to any One-for-One Training or Cross-Training opportunities under the conditions set forth in Part IV.C.5;
 12. EEO Resolution Records for any complaint under Part IV.D. or E;
 13. Access to data from which Class Counsel could conduct an analysis of the rates at which each qualified examiner certified African American and non-African American employees taking practical tests under Part IV.C.2.c;
 14. Completed forms showing how any employee performed on a practical test pursuant to Part IV.C;
 15. Completed written tests taken by any employee for a Position pursuant to Part IV.C, provided that Class Counsel may first be required to sign a document agreeing to keep the questions and correct answers confidential; and
 16. The materials used in all training courses given to EEO Resolution Unit investigators or Officials that have as a subject EEO issues, and provided in Part IV.E.
 17. Any and all other records maintained by Amtrak necessary or appropriate to evaluate its compliance with the terms of this Decree, provided however, if Amtrak gives written

notice of objection to the request to Class Counsel, Class Counsel may obtain such records only through the enforcement provisions set forth in Part XI of this Decree.

C. REPORTS TO THE COURT

Class Counsel shall file a written report with the Court every six months concerning the implementation of the provisions of the Decree, and shall serve a copy of such report on counsel for Amtrak. If requested by the Court, Class Counsel and Amtrak's Counsel shall appear before the Court to provide any additional information requested by the Court.

X. MONITORING

A. Monitor Roles

Amtrak's internal monitor shall be the VP Business Diversity. The VP Business Diversity may delegate monitoring tasks to the Director, Diversity Monitoring (or an outside consultant as described in Part IV(E)(1) of the Decree) and the Senior Director, Dispute Resolution.

B. Periodic Meetings

Class Counsel and the VP Business Diversity will meet every 90 days during the period of this Decree to discuss and resolve any outstanding issues with respect to implementation of and compliance with this Decree. Any issues that may arise during the term of the Decree with respect to individual Class Members shall be handled according to the applicable procedures and processes included in the injunctive provisions of this Decree; however nothing in the foregoing shall prohibit Class Counsel and

the VP Business Diversity from resolving such matters informally if they are willing and so able. One Class Representative who is an employee is entitled to attend each meeting, but may be recused for employee-specific discussions. Any information obtained by Class Counsel or the participating Class Representative during these meetings shall be treated as confidential and shall not be used for any purpose except for enforcement of this Decree. Amtrak shall not be required to pay transportation or lodging expenses for the Class Representative though it may elect to do so.

XI. ENFORCEMENT

A. Negotiation and Mediation

Prior to instituting any proceedings to enforce the provisions of this Decree, with the exception of proceedings relating to Parts IV(A)(2), IV(A)(4) and IV(E) above, Class Counsel shall provide written notice to the VP Business Diversity, with a copy to Amtrak's counsel, that specifically sets forth the ways in which Class Counsel believes that Amtrak is in violation of the Decree and the evidence in support thereof. If such notice is provided at least 10-30 days prior to a meeting scheduled pursuant to Part XI(B) above, the issues that are set forth in the notice shall be placed on the agenda for discussion during that meeting. If notice is provided more than 30 days prior, then the Parties shall hold a meeting within 20 days. If such notice is provided within 10 days prior to a meeting scheduled pursuant to Part XI(B) above, then at Amtrak's election, the issues that are set forth in the notice may be placed on the agenda for discussion at the regularly scheduled meeting or at a meeting to be held within 20 days of such notice.

The Parties will in good faith attempt to resolve all enforcement issues through discussion and negotiations. If the Parties are unable to resolve an issue raised in a written notice through discussion and negotiations, then Amtrak will provide a formal written response to Class Counsel within 15 days of the periodic meeting at which the issue will be discussed. The Parties will submit any unresolved enforcement issues to mediation within 30 days of the date that a discussion is held on the issue. Mediation will be discontinued if the issue is not resolved within 30 days of submission of the issue to mediation.

B. Procedures for Enforcement Proceedings

Enforcement proceedings, if any, shall be brought on written motion to the Court. If such proceedings are brought, Amtrak shall have 20 working days to file its response, unless such period is shortened by Court order.

XII. CONFIDENTIALITY AND RETURN OF DOCUMENTS

Class Counsel acknowledge that during the course of this litigation they have received, and may hereafter receive under this Decree in connection with the monitoring, confidential information regarding Amtrak and its personnel, including without limitation, personnel files, internal memoranda, personnel plans, programs, policies and procedures, computerized data and other information. Amtrak's counsel acknowledges that they have received confidential information regarding the Named Plaintiffs. The Parties, their retained experts, their consultants and their attorneys shall continue to be bound by the terms of the Stipulated Protective Order filed December 28, 1998, throughout the term of this Decree

and thereafter. Plaintiffs, Class Counsel, and their experts and consultants and others retained by them hereby agree not to disclose any confidential information that may be received from Amtrak during the term of the Decree. Class Counsel shall be responsible for advising their experts, outside consultants, and any other individual acting for or on behalf of Class Counsel, of the confidentiality provisions of this Decree and shall require that each such individual sign a confidentiality agreement in a form similar to the form that was used in connection with the Mediation in this case.

Each party shall, within sixty (60) days after the Injunctive Effective Date of this Decree, make available to the other Party all documents (and copies of documents) that were produced by the other Party in the course of the litigation, including all copies thereof that have been provided to or are in the possession of the Party's expert(s) or consultant(s). However, Class Counsel may retain in their possession their merged copy of Amtrak's HRIS/EIS computer disks for purposes of claims administration, Job Relief actions and allocation of the Settlement Fund. Class Counsel may also retain such documents as they reasonably deem appropriate for use in connection with the individual Plaintiffs' Job Relief actions. Plaintiffs shall provide an inventory of documents retained to Amtrak's counsel. The HRIS/EIS disks and documents that may be retained under this Part shall be made available for return to Amtrak no later than thirty (30) days after the conclusion of the Job Relief and claims-administration procedures set forth herein.

XIII. PUBLICITY

In addition to the promises of confidentiality expressly set forth in Part XII, the Parties agree

that they shall negotiate and issue Joint Press Releases consistent with the Press Release in connection with the Agreement in Principle, which shall be made available to the news media following the Court's preliminary and final approval of this Decree, subject to any necessary revision agreed on after final approval to reflect final approval dates, proceedings, and provisions. No counsel shall make any written or oral statements at any time that are inaccurate and/or inconsistent with the Joint Press Release (and any revision thereto on final approval) and with the joint press release that was made available to the news media in connection with the Parties' February 22, 2000 Agreement in Principle. Class Counsel shall not advise or in any manner promote a Plaintiff or Class Member to make an inconsistent statement, and Amtrak's counsel shall not advise or in any manner promote any representative of Amtrak to make an inconsistent statement.

XIV. SEVERABILITY

Except as set forth below, if any term or provision of this Decree, or the application thereof to any person or circumstances, is held to any extent to be invalid or unenforceable, the remainder of this Decree, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Decree shall be valid and enforceable to the fullest extent permitted by law.

Notwithstanding the above, if all of the injunctive provisions in Part IV, all of the provisions in Part V concerning incorporation of Decree provisions into the CBA, the entire monetary Claims Process, or the entire Job Relief Process is held to be invalid or unenforceable, the entire Decree shall be null and

void.

XV. GOVERNING LAW/ENTIRE AGREEMENT

The Parties agree that the validity, construction and enforcement of this Decree shall be governed by federal law. To the extent that it is determined that the validity, construction or enforcement of this Decree or any release executed pursuant to its terms is governed by state law, the law of the District of Columbia shall apply.

This Decree, including the Exhibits hereto, contains the entire agreement and understanding of the Parties with respect to the settlement of this litigation. This Decree does not impose any obligations on the Parties beyond the terms and conditions stated herein. Accordingly, this Decree shall not prevent or preclude Amtrak from revising its employment practices and policies or taking other personnel actions during the term of the Decree that do not violate specific requirements of the Decree.

Except as specifically provided for in this Decree, this Decree may not be amended or modified except with the express written consent of the Parties and the approval of the Court.

All Parties to this Decree acknowledge that this Decree is final and binding in all respects.

AGREED AND CONSENTED TO BY:

**FOR THE PLAINTIFFS AND MEMBERS
OF THE SETTLEMENT CLASSES**

FOR THE DEFENDANT

Michael D. Lieder (DC Bar #444273)

Thomas E. Reinert, Jr. (DC Bar #336867)

Maia Caplan (DC Bar #422798)
Sprenger & Lang DC, PLLC
1614 Twentieth Street, N.W.
Washington, D.C. 20009
(202) 265-8010

Grace E. Speights (DC Bar #392091)
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7084

Avis E. Buchanan (DC Bar #365208)
Washington Lawyers= Committee for
Civil Rights and Urban Affairs
11 Dupont Circle, N.W., Suite 400
Washington, D.C. 20036
(202) 319-1000

William Herrmann (NY Bar #2259893)
Acting Deputy General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 906-3971

Andrew A. Rainer
Shapiro, Haber & Urmy LLP
75 State Street
Boston, MA 02109
(617) 439-3939

Date: March 31, 2000

SO ORDERED, this _____ day of _____, 2000:

The Honorable Emmet G. Sullivan
United States District Court Judge

EXHIBIT A

Named Plaintiffs

James Thornton
Hakim N. Abdullah

Sheila Buchanan
Henry Crawford
Alexander Fitzgerald
James Fletcher
Otis Hargrove
James Jackson
Dennis Morgan
Jeffrey Plummer
Cornell Thomas
Thomas Reed Johnson
Michael D. Selby
Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees

EXHIBIT B (NAMED PLAINTIFF)

RELEASE OF CLAIMS

This Release of Claims is made and entered into this ____ day of _____, _____, by and between [Releasor] and the National Railroad Passenger Corporation (“Amtrak”).

Pursuant to the Final Order and Judgment entered by the United States District Court for the District of Columbia on _____, 2000 in *Thornton, et al. v. National Railroad Passenger Corporation*, No. 1:98CV00890 (EGS) (Civil Action), approving the Consent Decree between the Parties dated _____ and dismissing the Civil Action in its entirety on the merits, with prejudice,

I, [Plaintiff's Name], a Named Plaintiff in the Civil Action, together with each and all of my representatives, heirs, successors, and assigns, hereby fully, finally, unconditionally and irrevocably waive, release, remise, discharge and covenant not to sue Amtrak or any or all of its past or present predecessors, successors, parents, affiliates, subsidiaries and assigns, and their respective past or present directors, officers, employees, agents, attorneys and representatives, and anyone acting in concert with any of them (Amtrak Releasees), from or on any and all direct, indirect, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action of whatsoever kind or nature, arising up to and including May 5, 2000, which arise out of or relate to my application for a BMW agreement covered position (as defined in the Consent Decree), or my employment, compensation and benefits from a BMW agreement covered position at Amtrak, whether presently known or unknown, actual or potential, existing or

contingent, suspected or unsuspected, apparent or concealed, not specifically excepted herein (“Claims”), including but not limited to,

- (i) any and all direct, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action made by or on behalf of the Named Plaintiffs individually or on behalf of the Class as defined in the Consent Decree, or arising from or relating to matters or allegations which are the subject matter of this action, or that could have been made by or on behalf of the Named Plaintiffs individually or on behalf of the Class herein, whether known or unknown, actual or potential;
- (ii) any and all direct, representative, individual and class claims, allegations and causes of action, actual or potential, known or unknown, of race discrimination or retaliation that any of the Named Plaintiffs or Class Members made or brought or could have made or brought relating to their application for or employment in a BMW agreement covered position at any time between January 1, 1995 and May 5, 2000, through or in any court proceeding or in any arbitration or other dispute resolution mechanism or through any complaints or charges filed with the Equal Employment Opportunity Commission (“EEOC”) or any other federal, state, or local governmental body or authority, under any federal, state, or local statutory or common law, including, but not limited to, claims of race discrimination in hiring, placement, compensation, promotion, training, transfers, job assignment, job conditions, delegation of responsibility or authority, performance evaluations, resource allocation, benefits, or any other terms or conditions of employment, claims of retaliation, and claims

for damages, back pay or other monetary relief or benefits, or for injunctive, declaratory, equitable, compensatory, punitive or any other relief for any such alleged unlawful discrimination or retaliation; and

(iii) any and all direct, representative, individual and class claims, allegations and causes of action for attorneys' fees and costs that the Named Plaintiffs or the Class have made or could have made, as of May 5, 2000.

The following paragraph is added for claimants who reside or work in California or any other jurisdiction with a law or principle of common law which is similar, comparable or equivalent to Part 1542 of the California Civil Code:

It is understood and agreed that the claims, allegations, actions, rights, obligations, liabilities and causes of action herein released include not only those presently known to me, but also include all unknown or unanticipated claims, allegations, actions, rights, obligations, liabilities and causes of action of any and every kind, nature, and character whatsoever, which would otherwise come within the scope of the released claims as described above. Thus, it is also understood and agreed that if any facts relating to any such claims, allegations, actions, rights, obligations, liabilities and causes of action is found hereafter to be other than or different from the facts now believed by me to be true, I expressly accept and assume the risks of such different facts and expressly waive and release any and all provisions, rights and benefits conferred by Part 1542 of the California Civil Code, which reads:

Part 1542: Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any other law of any state or territory of the United States, or by any principle of common law, which is similar, comparable or equivalent to Part 1542 of the California Civil Code. I may hereafter discover facts other than or different from those which I know or believe to be true with respect to the claims which are the subject matter of the Consent Decree, the Complaint in the Civil Action, and/or this Release, but I fully, finally and irrevocably settle, waive and release, upon my signing this Release, which signing shall take place during the 7 day period following the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim which is the subject matter of the Consent Decree, the Complaint in the Civil Action, and/or this Release, without regard to the subsequent discovery or existence of such different or additional facts.

In signing this Release, I agree and acknowledge that a monetary payment is provided to me as full consideration pursuant to the terms of the Consent Decree and the Claims Resolution Process provided for therein.

I acknowledge that I have been represented by legal counsel in the negotiation and preparation of the Consent Decree and all exhibits thereto (including this Release), that I understand the

Consent Decree and all exhibits thereto (including this Release) and am fully aware of their content and legal effect, and that I have entered into the Consent Decree, and am executing this Release, freely, without coercion, based on advice of my legal counsel and my own judgment and not in reliance upon any representations or promises made by Amtrak, other than those expressly set forth in the Consent Decree.

This Release shall become effective on the Non-Injunctive Effective Date of the Consent Decree, as defined in Part III. of the Consent Decree, or seven days after the signing of this Release, whichever is later. This Release shall incorporate the terms and conditions of said Decree.

By signing this Release, I acknowledge and affirm (1) that I am competent, (2) that I have been afforded a time period of at least 21 days to review this Release with legal counsel of my choice and have done so, (3) that if I take fewer than 21 days to consider and execute this Release, I do so voluntarily, with the understanding that I will be accelerating its effective date, and (4) that I have read and understand and accept the nature, terms, scope and effect of this Release.

By my signature below, I represent that I understand that I am permitted to revoke this Release at any time during the period of seven days after I sign the Release. This Release will not be effective or enforceable and no payments will be made under the Consent Decree until the seven-day revocation period has expired without my having exercised my right of revocation.

By signing this Release, I acknowledge and affirm that I have carefully read and understand this entire document, that I have been advised to consult with an attorney prior to signing this Release, that no

promises or inducements have been made to me except as set forth in this Release, and that I have signed this release freely and voluntarily, intending to be legally bound by its terms.

RELEASOR

Signature of Named Plaintiff

Sworn to before me this ____ day of
_____, 2000.

Notary Public

EXHIBIT B (CLASS MEMBER)

RELEASE OF CLAIMS

This Release of Claims is made and entered into this ____ day of _____, _____, by and between [Releasor] and the National Railroad Passenger Corporation (“Amtrak”).

Pursuant to the Final Order and Judgment entered by the United States District Court for the District of Columbia on _____, 2000 in *Thornton, et al. v. National Railroad Passenger Corporation*, No. 1:98CV00890 (“Civil Action”), approving the Consent Decree between the Parties dated _____ and dismissing the Civil Action in its entirety on the merits, with prejudice,

I, [Class Member’s Name], a Class Member in the Civil Action, together with each and all of my representatives, heirs, successors, and assigns, hereby fully, finally, unconditionally and irrevocably waive, release, remise, discharge and covenant not to sue Amtrak or any or all of its past or present predecessors, successors, parents, affiliates, subsidiaries and assigns, and their respective past or present directors, officers, employees, agents, attorneys and representatives, and anyone acting in concert with any of them (“Amtrak Releasees”), from or on any and all direct, indirect, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action of whatsoever kind or nature, arising up to and including May 5, 2000, which arise out of or relate to my application for a BMW agreement covered position (as defined in the Consent Decree), or my employment, compensation and benefits in a BMW agreement covered position at Amtrak or the termination of my employment, compensation and benefits from a BMW agreement covered position at Amtrak, whether presently known or unknown, actual or potential,

existing or contingent, suspected or unsuspected, apparent or concealed, not specifically excepted herein

(“Claims”), including but not limited to,

(i) any and all direct, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action made by or on behalf of the Named Plaintiffs individually or on behalf of the Classes as defined in the Consent Decree, or arising from or relating to matters or allegations which are the subject matter of this action, or that could have been made by or on behalf of Named Plaintiffs individually or on behalf of the Class herein, whether known or unknown, actual or potential;

(ii) any and all direct, representative, individual and class claims, allegations and causes of action, actual or potential, known or unknown, of race discrimination or retaliation that any of the Named Plaintiffs or Class Members made or brought or could have made or brought relating to their application for employment in a BMW agreement covered position as of May 5, 2000, through or in any court proceeding or in any arbitration or other dispute resolution mechanism or through any complaints or charges filed with the Equal Employment Opportunity Commission (“EEOC”) or any other federal, state, or local governmental body or authority, under any federal, state, or local statutory or common law, including, but not limited to, claims of race discrimination in hiring, placement, compensation, promotion, training, transfers, job assignment, job conditions, delegation of responsibility or authority, performance evaluations, resource allocation, benefits, or any other terms or conditions of employment, claims of retaliation, and claims for damages, back pay or other

monetary relief or benefits, or for injunctive, declaratory, equitable, compensatory, punitive or any other relief for any such alleged unlawful discrimination or retaliation; and

(iii) any and all direct, representative, individual and class claims, allegations and causes of action for attorneys' fees and costs that the Named Plaintiffs or the Class have made or could have made, as of May 5, 2000.

The following paragraph is added for claimants who reside or work in California or any other jurisdiction with a law or principle of common law which is similar, comparable or equivalent to Part 1542 of the California Civil Code:

It is understood and agreed that the claims, allegations, actions, rights, obligations, liabilities and causes of action herein released include not only those presently known to me, but also include all unknown or unanticipated claims, allegations, actions, rights, obligations, liabilities and causes of action of any and every kind, nature, and character whatsoever, which would otherwise come within the scope of the released claims as described above. Thus, it is also understood and agreed that if any facts relating to any such claims, allegations, actions, rights, obligations, liabilities and causes of action is found hereafter to be other than or different from the facts now believed by me to be true, I expressly accept and assume the risks of such different facts and expressly waive and release any and all provisions, rights and benefits conferred by Part 1542 of the California Civil Code, which reads:

Part 1542: Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any other law of any state or territory of the United States, or by any principle of common law, which is similar, comparable or equivalent to Part 1542 of the California Civil Code. I may hereafter discover facts other than or different from those which I know or believe to be true with respect to the claims which are the subject matter of the Consent Decree, the Complaint in the Civil Action, and/or this Release, but I fully, finally and irrevocably settle, waive and release, upon my signing this Release, which signing shall take place during the 7 day period following the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim which is the subject matter of the Consent Decree, the Complaint in the Civil Action, and/or this Release, without regard to the subsequent discovery or existence of such different or additional facts.

In signing this Release, I agree and acknowledge that a monetary payment and/or specific job relief are provided to me as full consideration pursuant to the terms of the Consent Decree and the Claims Resolution Process provided for therein.

I acknowledge that I have been represented by legal counsel in the negotiation and preparation of the Consent Decree and all exhibits thereto (including this Release), that I understand the

Consent Decree and all exhibits thereto (including this Release) and am fully aware of their content and legal effect, and that I have entered into the Consent Decree, and am executing this Release, freely, without coercion, based on advice of my legal counsel and my own judgment and not in reliance upon any representations or promises made by Amtrak, other than those expressly set forth in the Consent Decree.

This Release shall become effective on the Non-Injunctive Effective Date of the Consent Decree, as defined in Part III. of the Consent Decree, or seven days after the signing of this Release, whichever is later. This Release shall incorporate the terms and conditions of said Decree.

By signing this Release, I acknowledge and affirm (1) that I am competent, (2) that I have been afforded a time period of at least 21 days to review this Release with legal counsel of my choice and have done so, (3) that if I take fewer than 21 days to consider and execute this Release, I do so voluntarily, with the understanding that I will be accelerating its effective date, and (4) that I have read and understand and accept the nature, terms, scope and effect of this Release.

By my signature below, I represent that I understand that I am permitted to revoke this Release at any time during the period of seven days after I sign the Release. This Release will not be effective or enforceable and no payments will be made under the Consent Decree until the seven-day revocation period has expired without my having exercised my right of revocation.

By signing this Release, I acknowledge and affirm that I have carefully read and understand this entire document, that I have been advised to consult with an attorney prior to signing this Release, that no

promises or inducements have been made to me except as set forth in this Release, and that I have signed this release freely and voluntarily, intending to be legally bound by its terms.

RELEASOR

Signature of Class Member

Sworn to before me this ____ day of
_____, 2000.

Notary Public

EXHIBIT B (BMWE)

RELEASE OF CLAIMS

This Release of Claims is made and entered into this ____ day of _____, 2000, by and between the Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees ("BMWE") and the National Railroad Passenger Corporation ("Amtrak").

Pursuant to the Final Order and Judgment entered by the United States District Court for the District of Columbia on ____ ____, 2000 in *Thornton, et al. v. National Railroad Passenger Corporation*, No. 1:98CV00890 (EGS) ("Civil Action"), approving the Consent Decree between the Parties dated _____, 2000, and dismissing the Civil Action in its entirety on the merits, with prejudice,

The BMWE, a Named Plaintiff in the Civil Action, together with each and all of its past or present predecessors, successors, parents, affiliates, subsidiaries and assigns, and its respective past or present directors, officers, employees, agents, attorneys and representatives, and anyone active in concert with any of them hereby fully, finally, unconditionally and irrevocably waive, release, remise, discharge and covenant not to sue Amtrak on any or all of its past or present predecessors, successors, parents, affiliates, subsidiaries and assigns, and their respective past or present directors, officers, employees, agents, attorneys and representatives, and anyone active in concert with any of them ("Amtrak Releasees"),

- (A) From or on any and all direct, indirect, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and cause of action of whatsoever kind or nature,

arising up to and including May 5, 2000, which arise out or relate to the race discrimination claims of the Named Plaintiffs and Class Members arising out of their applications for a BMW agreement covered position (as defined in the Consent Decree), or their employment, compensation and benefits in a BMW agreement covered position at Amtrak, or their termination of employment, compensation and benefits from a BMW agreement covered position at Amtrak, whether presently known or unknown, actual or potential, existing or contingent, suspected or unsuspected, apparent or concealed, not specifically excepted herein ("Claims"), including but not limited to,

- (i) any and all direct, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action arising out of alleged race discrimination or retaliation made by or on behalf of the Named Plaintiffs individually or on behalf of the Class as defined in the Consent Decree, or arising from or relating to the race discrimination or retaliation matters or allegations which are the subject matter of this action;
- (ii) any and all direct, representative, individual and class claims, allegations and causes of action, actual or potential, known or unknown, of race discrimination or retaliation that any of the Named Plaintiffs or Class Members made or brought or could have made or brought relating to their application for or employment in a BMW agreement covered position at any time between January 1, 1995 and May 5, 2000 through or in any court proceeding or in any arbitration or other dispute resolution mechanism or through any complaints or charges of race discrimination or retaliation filed with the Equal Employment Opportunity Commission

(“EEOC”) or any other federal, state, or local governmental body or authority, under any federal, state, or local statutory or common law, including, but not limited to, claims of such discrimination in hiring, placement, compensation, promotion, training, transfers, job assignment, job conditions, delegation of responsibility or authority, performance evaluations, resource allocation, benefits, or any other terms or conditions of employment, claims of retaliation, and claims for damages, back pay or other monetary relief or benefits, or for injunctive, declaratory, equitable, compensatory, punitive or any other relief for any such alleged unlawful discrimination or retaliation; and

- (iii) any and all direct, representative, individual and class claims, allegations and causes of action for attorneys’ fees and costs that the Named Plaintiffs or the Class have made or could have made arising out of the claims in this case, as of May 5, 2000.

From or on any and all direct, indirect, representative, individual and/or class claims, allegations, action, rights, obligations, liabilities, and cause of action of whatsoever kind or nature arising during the term of this Consent Decree, including any extension thereof, through or in any court proceeding or in any arbitration or other dispute resolution mechanism, which arise out or relate to any claim that actions taken by Amtrak Releasees in implementation of the terms of the Consent Decree violate the Railway Labor Act, any collective bargaining agreement, or any obligation or statutory, regulatory, or common law, provided however, that the terms of this release shall not be interpreted to limit the BMWWE in seeking enforcement of the Consent Decree pursuant to the provisions of Part XI or in seeking to have certain provisions of the Consent Decree

incorporated into the CBA pursuant to the provisions of Part V. Moreover, nothing in this Release releases the Amtrak Releasees from complying with the terms of the CBA or CA, to the extent that its provisions are not superceded by the provisions in the Consent Decree.

This Release does not bar or otherwise prevent the BMWWE from being a Plaintiff in the existing case of *Campbell v. Amtrak*, to the extent that the BMWWE does not assert in that case any claims of race discrimination with respect to BMWWE agreement-covered Positions, as those terms are defined in the Consent Decree.

RELEASOR

Pennsylvania Federation of the Brotherhood of Maintenance
of Way Employees

By:

Sworn to before me this _____ day of
_____, 2000

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

James Thornton, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98CVO890(EGS)
)	
National Railroad Passenger)	
Corporation (“Amtrak”),)	
)	
Defendant.)	

JOINT STIPULATION OF DISMISSAL

As a result of successful mediation and negotiations, Plaintiffs and the National Railroad Passenger Corporation (“Amtrak”) have entered into the attached Consent Decree that fully settles the claims alleged in the instant action to the satisfaction of both Parties. Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Parties, by and through their attorneys, hereby stipulate and agree that the instant action be dismissed in its entirety, with prejudice, on the terms and conditions set forth in the attached Consent Decree, and that such dismissal be effective upon the Non-Injunctive Effective Date of the Consent Decree as defined therein. The Parties to this Stipulation of Dismissal consist of Plaintiffs James Thornton, Hakim N. Abdullah,

Sheila Buchanan, Henry Crawford, Alexander Fitzgerald, James Fletcher, Otis Hargrove, James Jackson, Dennis Morgan, Jeffrey Plummer, Cornell Thomas, Thomas Reed Johnson, Michael D. Selby and the Pennsylvania Federation of the Brotherhood of Maintenance of Way Workers, individually and on behalf of all Class Members, as defined in the Consent Decree, and Defendant Amtrak.

The Parties further stipulate that the above-referenced Consent Decree is specifically enforceable in federal court, under Part 706(f)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), should either party hereinafter allege a breach of the same.

Respectfully submitted,

FOR PLAINTIFFS:

FOR DEFENDANT AMTRAK:

Michael D. Lieder (DC Bar No. 444273)
Maia Caplan (DC Bar No. 422798)
SPRENGER & LANG DC, PLLC
1614 Twentieth Street, N.W.
Washington, D.C. 20009-1001
(202) 265-8010

Roderic V.O. Boggs (DC Bar No. 090688)
Avis E. Buchanan (DC Bar No. 3652080)
WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS
11 Dupont Circle, N.W., Suite 400
Washington, DC 20036
(202) 319-1000

Thomas E. Reinert, Jr. (DC Bar No. 336867)
Grace E. Speights (DC Bar No. 392091)
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7084

William Herrmann
Acting Deputy General Counsel
NATIONAL RAILROAD PASSENGER
CORPORATION
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 906-3971

Andrew A. Rainer (MA Bar No. 542067)
SHAPIRO HABER & URMYY LLP
75 State Street
Boston, MA 02109
(617) 439-3939

Dated: _____, 2000

SO ORDERED this ____ day of _____, 2000.

The Honorable Emmet G. Sullivan
United States District Court Judge

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

James Thornton, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98CVO890(EGS)
)	
National Railroad Passenger)	
Corporation (“Amtrak”),)	
)	
Defendant.)	

**RELEASE OF CLAIMS AGAINST AMTRAK MW SETTLEMENT FUND AND
ADMINISTRATORS OF THE FUND**

This Release of Claims against the Amtrak MW Settlement Fund and the Administrators of that Fund is made and executed by the undersigned Claimant.

Recitals:

1. I am one of the claimants as defined in the Consent Decree (the “Decree”) in the above captioned class action lawsuit.
2. I have submitted a Claim Form in order to receive an award from the Settlement Fund

(the "Fund") created pursuant to the Decree, and I have been informed that I will receive an award from the Fund if I sign and return to the Administrators of the Fund this Release and certain other documents.

3. I understand that I will be entitled to two payments from the Fund, one after I return the fully-executed releases and the other after Amtrak makes two payments to the Fund in 2002

NOW, THEREFORE, in consideration of the benefits to be provided to me under the Decree, the receipt and sufficiency of which I acknowledge, I agree as follows:

Upon receipt of each payment from the Fund, I, for myself, my heirs, executors, administrators and assigns, unconditionally, irrevocably, fully and finally release and forever discharge the Fund, the Administrators, and the Trustees from all liabilities and claims, except for such additional payments to which I am entitled as specified in the Decree or implementation orders. Upon receipt of the second of the payments, I unconditionally, irrevocably, fully and finally release and forever discharge the Fund, the Administrators, and the Trustees from all liabilities and claims.

I KNOW AND FULLY UNDERSTAND THE CONTENTS OF THIS RELEASE AND EXECUTE IT FREELY, BEING FULLY AWARE OF ITS FULL AND FINAL EFFECT.

Upon penalty of perjury pursuant to 28 U.S.C. § 1746, I state that I am the person identified in the Release, that all of the factual statements herein are true and correct, and that my signature signifies acceptance of all terms of this Release.

Date: _____

Claimant's Signature

Claimant's Typed or Printed Name

Claimant's Social Security Number

